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IN THE
Supreme Court of the United States

OCTOBER TERM 1941.

No. ~~958-959~~ 26-27

HENRY ANTON PFISTER,

Petitioner,

v.

**NORTHERN ILLINOIS FINANCE CORPORATION,
ALGONQUIN STATE BANK, HART-
MAN AND SON, E. C. HOOK, and EMIL
GEEST,**

Respondents.

PETITION AND BRIEF

**On Application for Writ of Certiorari to the United States
Circuit Court of Appeals for the Seventh Circuit**

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Respondents.

PETITION.

**On Application for Writ of Certiorari to the United States
Circuit Court of Appeals for the Seventh Circuit**

(The brief in support of this petition for certiorari begins at page 29.)

Note: All emphasis in this petition and in the accompanying brief is supplied except when otherwise stated.

* At page 26, following this petition and preceding the brief which supports it, there are inserted for reference copies of applicable portions of Sections 2(10), 38, and 39a (8) and (c) and the whole of Section 75 of the Bankruptcy Act. These statutes are involved in this cause.

To the Honorable Harlan F. Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

A SUMMARY STATEMENT OF THE MATTER INVOLVED.

1. The Statutes Involved.

The following statutes are involved:

Section 2(10) of the Bankruptcy Act, 11 U.S.C. 11(10), which invests bankruptcy courts with jurisdiction to consider the records, findings and orders of referees in bankruptcy. Copy of the applicable portion is inserted following this petition at page 26.

Section 38 of the Bankruptcy Act, 11 U.S.C. 66, which makes the jurisdiction and all actions of a referee and all proceedings before that officer subject to a review by the judge of the bankruptcy court. Copy of the applicable portion is inserted following this petition at page 26.

Section 39(c) of the Bankruptcy Act, 11 U.S.C. 67(c), which provides for petitions for review by an aggrieved party and certificates on review. Copy of the applicable portion is inserted following this brief at page 26.

Section 75 of the Bankruptcy Act, 11 U.S.C. 203, which is the former debtor law. Copy of the applicable portion is inserted following this brief at page 26.

Section 75(a) of the Bankruptcy Act, 11 U.S.C. 203(a) provides for the appointment of a special referee, to be known as a conciliation commissioner, who shall administer the former debtor law pursuant to reference from the judge of the district court.

2. The Decisions in the Courts Below.

Two petitions for review of certain orders of a conciliation commissioner were dismissed by the district court for want of jurisdiction. Appeals from these final orders were consolidated by order of the District Court and also by order of the Circuit Court of Appeals. R. 181. R. 206. The Circuit Court of Appeals sustained the District Court. The petitioner seeks a writ of certiorari.

The opinion of the Circuit Court of Appeals is reported as *Pfister v. Northern Illinois Finance Corporation*, CCA 7, 123 Fed. (2d) 543, decided November 10, 1941. It appears in the Record at R. 209 to 215. The final orders of the Appellate Court are at R. 215 to 216.

The District Court rendered no opinion. The final orders of the District Court merely dismissed the petitions for review for want of jurisdiction. R. 173 to 178.

3. A Very Brief Outline of the Procedure in the District Court.

The following is a very brief outline of so much of the procedure in the District Court as is necessary to understand this application for certiorari.

(1) While the case was pending under Section 75(s) and when the farmer debtor's counsel, J. E. Dazey, Esq., was incapacitated from a stroke of apoplexy, the conciliation commissioner issued four certain orders out of which arose the issues here presented. They are more fully referred to at pages 5, 6, and 7 of this petition.

(2) Before any right intervened the farmer debtor filed with the conciliation commissioner petitions for rehearing which were entertained. The whole proceeding

was considered and the petitions for rehearing were denied. They are more particularly referred to at page 7 of this petition.

(3) Petitions for review were filed with the conciliation commissioner within ten days from the denial of the respective petitions for rehearing. They were also filed within four months of the approval of the appraisal. They are referred to more fully at page 8 of this petition. Section 39(c) of the Bankruptcy Act provides that petitions for review shall be filed within ten days from the entry of the order complained of. Section 75 of the Bankruptcy Act provides that in proceedings under that section, objections, exceptions and appeals may be filed and taken within four months from the approval of the appraisal.

(4) The District Court dismissed the petitions for review upon the ground that it had no jurisdiction.

4. The Petitioner and the Property Involved.

The petitioner is a dairy farmer who with his family resides upon a farm of about 80 acres in Illinois. The livestock and equipment of the dairy farm, which is operated by the petitioner and his family, consists of approximately 20 cows, 1 bull, 3 horses, 20 hogs and 130 chickens, with the usual complement of farm implements and other equipment necessary to operate it. R. 14. R. 20. R. 70 to 72. R. 91, top of page.

The petitioner invoked Section 75 (a) to (r) of the Bankruptcy Act, 11 U.S.C., Section 203, by filing his petition as a farmer debtor for composition or extension. R. 14 and 15. Failing to accomplish that endeavor, he amended his petition and applied for a three year stay and for rehabilitation pursuant to Section 75(s); 11 U.S.C., Section 203(s). R. 25.

5. The Proceedings Complained Of.

The proceedings complained of arose out of the actions of the conciliation commissioner under Section 75(s). While counsel for the farmer debtor was incapacitated from a stroke of apoplexy, the conciliation commissioner issued four orders in all, (1), he issued his order of August 13, 1940 (R. 72 to 77), and (2), he later issued a set of three orders of September 7, 1940. R. 77 to 88. The incapacity of the farmer debtor's counsel, J. E. Dazey, Esq., is described in his affidavit. R. 34 and 35. Since his incapacity occurred Mr. Dazey has not participated in the proceedings except to prepare his affidavit.

The four orders will next be described briefly.

(1) THE ORDER OF AUGUST 13, 1940 R. 72 to 77.

On August 13, 1940, at the first creditors' meeting under Section 75(s), the conciliation commissioner approved the appraisement of the farmer debtor's property and set aside his exemptions. R. 10, entries of August 13, 1940: R. 69 to 72. That day, without any preliminary notice having been given, three of the respondents moved that rent be fixed at \$6,375 for three years and that additional payments on the principal of the debts be ordered in the like sum of \$6,375, making a total of \$12,750 to be paid within three years. R. 9, entry of August 13, 1940. These motions were granted by the conciliation commissioner on the same day they were filed by ordering a total of \$12,750 to be paid by the farmer debtor within less than 2 years and 9 months. (The appraisement was:

real estate \$16,000; unexempt chattels \$1786). Rental payments were made payable semi-annually. Principal payments were made payable quarterly. The order also included a stay for a period of 2 years, 8 months, 13 days from the date of its entry. That is, the three year statutory stay was made to run, not from the entry of the stay order as the statutes requires but, from April 26, 1940, which date was more than three months preceding the entry of the order. The last payment was ordered to be made by April 26, 1943. R. 9, entry of August 13, 1940. R. 72 to 77. Section 75(s) (2). *Wright v. Union Central*, 311 U. S. 273, 275; citing: *John Hancock v. Bartels*, 308 U. S. 180 and *Borchard v. California*, 310 U. S. 311.

(2) "THE THREE ORDERS OF SEPTEMBER 7, 1940.

R. 77 to 88

The first 'creditors' meeting was adjourned to September 7, 1940, to hear petitions for reclamation of mortgaged chattels which had been presented by three of the respondents. R. 42 to 48. R. 48 to 60. R. 60 to 65. Three of these petitions were granted by three orders which were purportedly entered on that date. The word "purportedly" is used because, as will be shown in the brief in support of this petition, the record contains evidence indicating that they were not entered then. (See page 53 under heading "Sixth" of the following brief.)

These three orders ordered sold as "perishable property" the debtor's cows, bull, horses, sows, farm machinery, and his 1939 crops.

This would have left to the farmer debtor, with which to operate his 80 acre dairy farm for the remainder of the stay period, and from which to produce support for his family, the rent and the extra principal payments and also to accumulate sufficient funds to be used in redeeming his mortgaged farm and automobile, the following chattels:

his household goods appraised at	\$105.00
4 heifers appraised at	60.00
15 pigs appraised at	20.00
130 hens appraised at	50.00
1 automobile appraised at	275.00 (mortgaged
for its full value. R. 18. R. 71)	

Total value\$510.00

leaving \$235 free from mortgage liens. R. 18. R. 71.

These four orders, namely (1) that of August 13, 1940, and (2) the three purportedly of September 7, 1940, are the orders complained of.

6. Petitions for Rehearing of the Conciliation Commissioner's Orders.

Before any right intervened petitions for rehearing of all of the four orders of the conciliation commissioner were presented to and entertained by him. He overruled motions by the creditors to dismiss them for want of jurisdiction to entertain them. After considering all of the proceedings, the conciliation commissioner denied both petitions for rehearing. R. 139 to 164. R. 13, first entry of November 28, 1940. R. 88 to 116. Also brief herein at page 36 and at pages 54 and 55 under heading "Seventh."

7. - Proceedings for Review of the Conciliation Commissioner's Orders.

The petition for review of the conciliation commissioner's order of August 13, 1940, and his certificate on review appear in the record at R. 165 to 173.

The petition for review of the conciliation commissioner's three orders of September 7, 1940, and his certificate on review appear in the record at R. 116 to 132.

As already stated the District Court dismissed both petitions for review for lack of jurisdiction. R. 173 to 175. R. 176 to 178.

8. Pertinent Procedural Dates.

August 13, 1940—The conciliation commissioner approved the appraisal. (Real estate \$16,000, unexempt and mortgaged chattels \$1786.00): R. 10, entry of August 13, 1940. R. 69, top of page.

August 13, 1940—Entry of order by conciliation commissioner fixing rental and additional payments at \$12,750, setting off exemptions, and staying proceedings for 2 years, 8 months, 13 days: R. 9, entry of August 13, 1940. R. 72 to 77.

September 7, 1940—Purported entry by the conciliation commissioner of three orders directing sale of livestock, feed and farm implements as "perishable." R. 10, entry of September 7, 1940. R. 77 to 88.

September 16, 1940—Petition by farmer debtor to conciliation commissioner for rehearing of order of August 13, 1940, filed. R. 10, entry of September 16, 1940. R. 139 to 147.

September 17, 1940—Petition by the farmer debtor to District Court for an emergency restraining order setting up the void order of August 13, 1940, for stay, rental and additional payments, and apprising the court of the pending petition for rehearing of it, also averring that although no formal order of sale had been issued by the conciliation commissioner, yet the farmer debtor had been informed that said conciliation commissioner proposed to issue an order to sell his cows, etc., within ten days from September 7. R. 27 to 35. Answer and exhibit. R. 35 to 40, order of denial by District Court. R. 41.

September 20, 1940—Petition by farmer debtor to conciliation commissioner for rehearing of three orders of September 7, 1940. R. 11, entry of September 20, 1940. R. 88 to 96.

September 30, 1940—Denial by conciliation commissioner of petition for rehearing of three orders of September 7, 1940. R. 12, entry of September 30, 1940. R. 109 to 116.

October 9, 1940—Petition for review of three orders of September 7, 1940. R. 12, entry of October 9, 1940. R. 116 to 129.

November 28, 1940—Denial of petition for rehearing of Order of August 13, 1940. R. 13, entries of November 28, 1940. R. 158 to 164.

November 28, 1940—Petition for review of Order of August 13, 1940. R. 13, first entry of November 28, 1940. R. 165 to 172.

December 13, 1940—Expiration of "four months from the date that the referee approves the appraisal." Quoted from the last sentence of the first paragraph of Section 75(s).

December 16, 1940—District Court dismissed petitions for review for lack of jurisdiction. R. 173 to 175. R. 176 to 178.

November 10, 1941—Circuit Court of Appeals affirmed the District Court. Opinion R. 209 to 215. Final orders, R. 215 to 216.

December 6, 1941—Circuit Court of Appeals denied a petition for rehearing. R. 220.

II.

STATEMENT OF THE BASIS OF THE JURISDICTION OF THIS COURT.

The jurisdiction of this court is conferred by Section 240(a) of the Judicial Code, 28 U.S.C. 347(a).

The petitioner has complied with Section 8(a) of the Act of February 13, 1925; 28 U.S.C. 350. The judgments of the Appellate Court below (R. 209 to 215) became final on December 6, 1941 when his petition for rehearing was denied. R. 220. This petition for certiorari is filed within three months thereafter.

III.

THE QUESTIONS PRESENTED.

The questions presented are:

1.

Did the District Court have jurisdiction to hear the petitions for review which were filed within the four months period fixed by Section 75(s)?

2.

Did the District Court have jurisdiction to hear the petitions for review which were filed within ten days after the denial of petitions for rehearing of the orders com-

plained of, no right having intervened, when said petitions for rehearing had been entertained and considered and the entire proceeding had been considered by the conciliation commissioner?

3.

Did the District Court have jurisdiction to hear the petitions for review of void orders of the conciliation commissioner if such petitions for review were not filed within ten days of the entry of such void orders?

4.

Did the District Court have jurisdiction, while the farmer debtor proceeding was still pending, to hear petitions for review of orders entered by a conciliation commissioner regardless of when such petitions for review were filed?

5.

Is Section 39(c) of the Bankruptcy Act, in providing a period of ten days for filing a petition for review a statute of limitation or is it the adoption by statute of a rule of procedure?

6.

Is Section 2(10) of the Bankruptcy Act limited by Section 39(c) of that Act?

7.

Is Section 38 of the Bankruptcy Act limited by Section 39(c) of that Act?

8.

When an order is issued by a conciliation commissioner in a farmer debtor proceeding and, while the proceeding is still pending and no right has intervened, a petition for

rehearing is filed and entertained by the conciliation commissioner who overrules a motion to dismiss the petition for rehearing for lack of jurisdiction to entertain it, and the entire proceeding is considered by the conciliation commissioner, and the conciliation commissioner then denies said petition for rehearing, does the time for seeking a review of said order run from the date of the overruling of the petition for rehearing?

9.

When no right has intervened, does the period named in Section 39(c) of the Bankruptcy Act limit the time within which an application may be made to a conciliation commissioner for rehearing and reconsideration of an order entered by him in a proceeding under Section 75 of that Act?

10.

If no right has intervened, may a conciliation commissioner in a farmer debtor proceeding entertain or consider an application for rehearing of his order if the application be made more than ten days after the entry of the order?

11.

In a farmer debtor proceeding, may a conciliation commissioner fix the statutory stay and rental period so that it starts to run from a date prior to the approval of the appraisal and prior to the order setting aside exemptions?

12.

In a farmer debtor proceeding may a conciliation commissioner in the statutory order staying proceedings and permitting possession to be retained by the farmer debtor upon the payment of rental, make the time of said stay and possession less than three years?

13

13.

In a farmer debtor proceeding, may a conciliation commissioner order sold as perishable property the farmer debtor's cows, bull, horses, sows, farm machinery and farm crops consisting of corn, soy beans, hay, fodder, ensilage, oats, barley, rye and wheat?

14.

In a farmer debtor proceeding may a conciliation commissioner order the farmer debtor to pay as rental and as payments on the principal of his debts within 2 years, 8 months and 13 days, the total sum of \$12,750 where the appraisement of all the real estate is \$16,000 and the appraisement of all the unexempt chattels is \$1786?

15.

When proceedings for obtaining a review of an order issued by a conciliation commissioner in a proceeding pending before him under Section 75 of the Bankruptcy Act have been perfected by the filing of a petition for review by a person aggrieved by said order and the serving of a copy of said petition upon the proper adverse parties, and the conciliation commissioner has duly prepared and transmitted to the clerk his certificate on said petition for review, all as prescribed in Section 39(c) of the Bankruptcy Act, may the court dismiss said petition for lack of jurisdiction for the sole reason that said petition for review was not filed within ten days after the original entry of the order complained of?

IV.

**REASONS RELIED UPON FOR ALLOWANCE OF
A WRIT OF CERTIORARI.**

The petitioner respectfully represents that the following special and important reasons necessitate the granting of a review on writ of certiorari to the court below:

1.

The interpretation of a statute of the United States is involved, namely Section 75 of the Bankruptcy Act; Title 11 U.S.C., Section 203. The court below has held that the following specific mandatory provision of Section 75 of the Bankruptcy Act is ineffective, namely: "That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal." (Quoted from the last sentence of the first paragraph of Section 75(s).

2.

The interpretation of another statute of the United States is involved, namely Section 39(c) of the Bankruptcy Act; Title 11 U.S.C., Section 67(e).

The court below has interpreted Section 39(c) to be the supreme grant of jurisdiction to courts of bankruptcy to review the records, findings and orders of a conciliation commissioner in a proceeding under Section 75 of the Bankruptcy Act.

3.

The interpretation of still another statute of the United States is involved, namely Section 2(10) of the Bankruptcy Act; Title 11 U.S.C., Section 11(10).

The court below has held that Section 39(c) of the Bankruptcy Act, which names a period within which to file a petition for review, is a limitation upon the provision of Section 2(10) of the same Act which without qualification expressly invests courts of bankruptcy with full power to exercise original jurisdiction in proceedings under the Act to consider the records, findings and orders certified to the judges by referees and to confirm, modify, or reverse the same or return the records with instructions.

4.

The interpretation of still another statute of the United States is involved, namely Section 38 of the Bankruptcy Act; Title 11, U.S.C., Section 66.

The court below has held that Section 39(c) of the Bankruptcy Act, which names a period within which to file a petition for review, is a limitation upon the provision of Section 38 of the same Act which, without qualification, expressly makes the jurisdiction of a referee and all actions of a referee and all proceedings before a referee subject always to a review by the judge of the bankruptcy court.

5.

There is involved the interpretation of Section 75(s)(2) which reads as follows:

“(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of

the court, provided he pays a reasonable rental semi-annually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income and earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors; and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation."

the questions being (1) whether the conciliation commissioner may order sold as perishable property a farmer debtor's cows, bull, horses, sows, farm machinery and farm crops consisting of corn, soy beans, hay, fodder, ensilage, oats, barley, rye and wheat, leaving him, for the operation of his 80 acre dairy farm and to achieve rehabilitation, his household goods, 4 heifers, 15 chickens, 130 hens, and a \$275 automobile, mortgaged for its full value; and (2) whether the conciliation commissioner may order that farmer debtor to pay, in addition to rental, such rental

being by statute limited to the rental value, net income and earning capacity of the farm, an extra sum of \$6375 to be paid on the principal of his debts in quarterly installments within 2 years, 8 months and 13 days.

6.

The decision of the court below is in direct conflict with the decision of this court in *Benitez v. Bank*, 313 U. S. 270, 271, decided last term. That decision, at page 271, held that the words, "this section" in Section 75 of the Bankruptcy Act, refers to Section 75 of the Bankruptcy Act, Title 11, U.S.C., 203. The appellate court below held to the contrary that the words "this section" in Section 75 do not refer to Section 75 but to a particular subsection of Section 75 and to only a portion of that subsection. The exact words of the Appellate Court were: "Our duty is to conserve both sections, [that is, Section 75 and Section 39(c) of the Bankruptcy Act], if reasonably possible, that both may be effective. This can be done by construing the word 'section' in the first paragraph of Section 75(s) to refer to only that part of the paragraph which precedes the provisos and we thus construe it." R. 211, bottom of the page, running over to the top of R. 212.

7.

The decision of the appellate court below is in further conflict with the decision of this court in *Benitez v. Bank*, 313 U.S. 270. There this court held that in a farmer debtor proceeding, the provisions of said Section 75 are superior to the other provisions of the Bankruptcy Act, having been expressly left unaffected by the Bankruptcy Revision Act of 1938. That decision of this court also held that when a provision of Section 75 conflicts with a provision of the general Bankruptcy Act, the provision of Section 75 is controlling.

The appellate court below held to the contrary that where a provision of Section 75 conflicts with a provision on the same subject in the General Bankruptcy Act, the General Bankruptcy Act provision overrides the provision of Section 75. The appellate court said: "Hence we think Section 39(c) is controlling here." R. 212, top of page.

8.

The decision of the court below in sustaining the District Court's orders of dismissal is in conflict with the decision of this court in *Potter v. Union Central*, 308 U. S. 524. In that case the Circuit Court of Appeals in *Potter v. Union Central*, (CCA 6), 102 Fed. (2d) 1010, had dismissed the appeal for lack of jurisdiction because objections to a master's report to the District Court had not been filed within the period prescribed by the rules of the district court. This court in its *per curiam* decision said: "As the appeal from the order of the District Court, filed December 4, 1937, was duly perfected, the Circuit Court of Appeals had jurisdiction and its order dismissing the appeal was error."

9.

The decision of the court below in holding that literal compliance with Section 39(c) of the Bankruptcy Act is jurisdictional, is in direct conflict with the decisions of all other Circuit Courts of Appeals on the same subject matter of the interpretation of that Section.

In the Third Circuit:

Thummess v. Von Hoffman, (CCA 3), 109 Fed. (2d) 291, decided January 15, 1940, held that "No question as to the jurisdiction of the Bankruptcy Court to entertain a petition for review is involved by Section 39, sub. (c)".

In the Second Circuit:

In re Albert; Brooklyn v. Albert, (CCA 2), 122 Fed. (2d) 393, decided July 22, 1941, held that "Its [that is, a court of bankruptcy's] power to review orders of referees flows from Section 2 (10) of the Act and nothing in Section 39(c) expressly limits that power".

In the Sixth Circuit:

Miller v. Hatfield, (CCA 6) 111 Fed. (2d) 28, decided April 11, 1940. Where no petitions for review were filed until long after 10 days the District Court dismissed them for lack of jurisdiction. The Circuit Court of Appeals upon consideration of Section 39(c) reversed the District Court, holding it had jurisdiction.

District Courts also have generally reached the same conclusion:

In re Madonia, (District Court, Illinois), 32 Fed. Supp. 165.

In re Amsterdam (District Court, New York), 35 Fed. Supp. 618.

In re Ragozinno, (District Court, New York), 37 Fed. Supp. 524.

In re Fergus Falls, (District Court, Minnesota), 41 Fed. Supp. 355.

10.

The final orders of the District Court below in this case (which were affirmed by the appellate court) are in direct conflict with a former decision by the same judge of the same court upon the same subject matter. In this case the Circuit Court of Appeals below sustained the District Court in dismissing the petitions for review for want of jurisdiction. The assumption was that jurisdiction of a petition for review is exclusively defined in Section 39(c)

of the Bankruptcy Act. The same District Court, by the same judge, held to the contrary and in accord with the main current of decisions in the case of *In re Madonia*, District Court of Illinois, 35 Fed. Supp. 165, decided March 27, 1940, which was nine months before the inconsistent final orders were entered in this matter. After quoting Section 39(c) the same judge there said: "It is the position of the trustee that the provisions for filing the petition for review and serving a copy upon the adversary are jurisdictional and that if the petition is not filed and the copy served within the ten day period (unless the court has within the ten days granted an extension), the referee is without power to grant the petition, or the judge to hear it. I can not agree. Statutes granting a right of review of the order of a court shall be liberally construed, so that if error occurs, it may be corrected."

11.

The decision of the court below in holding that the petitions for rehearing of said orders did not expunge the finality of the original entries thereof, merely because said petitions for rehearing were not filed with the conciliation commissioner within the period named in Section 39(c) of the Bankruptcy Act for filing petitions for review, is in conflict with the decisions of this court in the following cases, among others:

Brockett v. Brockett, (1843) 43 U. S. (2 How.) 238;
Washington v. Bradley, (1869), 74 U. S. (7 Wall.)
 575;

Memphis v. Brown, (1877) 94 U. S. (4 Otto) 715;
Texas v. Murphy (1884), 111 U. S. 488;

Andrews v. Virginian (1919), 248 U. S. 272;

Citizens v. Opperman (1919), 249 U. S. 488;

Gypsy v. Escoe (1927), 275 U. S. 498;

U. S. v. Seminole (1937), 299 U. S. 417.

Wayne v. Owens-Illinois (1937), 300 U. S. 131, 136, 137;

Bowman v. Loperena (1940), 311 U. S. 262.

The rule of such decisions of this court have thoroughly established federal procedure and have been followed by the lower federal courts for nearly a century.

12.

The decision of the appellate court below in holding that a conciliation commissioner may not rehear his order after the expiration of ten days from its entry is in direct conflict with the decision of other Circuit Courts of Appeals in:

In the Matter of Pottasch, Central v. Irving, CCA 2, 79 Fed. (2d) 613, decided November 12, 1935, before the decision of this court in *Wayne v. Owens-Illinois*, (1937), 300 U. S. 131.

Miller v. Hatfield, CCA 6, 111 Fed. (2d) 45, decided April 11, 1940; after the decision of this court in *Wayne v. Owens-Illinois*, (1937), 300 U. S. 131, and expressly referring to the present Section 39(c) of the Bankruptcy Act.

In re Jayrose, (CCA 2) 93 Fed. (2d) 471, decided December 13, 1937, ten months after *Wayne v. Owens-Illinois* (1937), 300 U. S. 131.

13.

The decision of the appellate court below in holding that "However, in this case, the rehearing was not had or granted" (R. 213, middle of paragraph continued from R. 212), referring to the denial by the conciliation commis-

sioner of the petitions for rehearing after denying motions to dismiss them for want of jurisdiction to entertain them and then hearing them, and considering the whole proceeding, and meaning that the orders, to which said petitions for rehearing were directed were not thereby vacated or expunged, is in conflict with the decisions of this court in:

Brockett v. Brockett (1843), 43 U. S. (2 How.) 238;

Washington v. Bradley (1869), 74 U. S. (7 Wall.) 575;

Memphis v. Brown (1877) 94 U. S. (4 Otto) 715;

Texas v. Murphy (1884) 111 U. S. 487;

Aspen v. Billings (1893) 150 U. S. 31;

Kingman v. Western (1898) 170 U. S. 675;

U. S. v. Ellicott (1912), 233 U. S. 524;

Andrews v. Virginian (1919) 248 U. S. 272;

Chicago v. Basham (1919) 249 U. S. 164;

Citizens v. Opperman (1919) 249 U. S. 488;

Morse v. U. S. (1926), 270 U. S. 151;

Gypsy v. Escoe (1927), 275 U. S. 498;

U. S. v. Seminole (1937), 299 U. S. 417;

Bowman v. Loperena (1940), 311 U. S. 262.

Which decisions have been generally followed and federal procedure has conformed to them for nearly a hundred years.

14.

The decision of the appellate court below in holding that the filing of a petition for rehearing with the conciliation commissioner, its consideration by the conciliation commissioner, the refusal of the conciliation commissioner to dismiss such petition for rehearing, and the consideration of the whole proceeding by the conciliation commissioner, did not have the effect, for the purpose of seeking a re-

view, of vacating or expunging the order to which the petition for rehearing was directed, merely because the conciliation commissioner did not formally vacate such order and enter a new order after rehearing, is in conflict with the decisions of this court, among others, in:

Brockett v. Brockett (1843), 43 U. S. (2 How.) 238;

Washington v. Bradley (1869), 74 U. S. (7 Wall.) 575;

Texas v. Murphy (1884), 111 U. S. 487;

Aspen v. Billings (1893), 150 U. S. 31;

Kingman v. Western (1898), 170 U. S. 675;

U. S. v. Ellicott, (1912), 233 U. S. 524;

Chicago v. Basham (1919), 249 U. S. 164;

Citizens v. Opperman (1919), 249 U. S. 488;

Morse v. U. S. (1926), 270 U. S. 151;

Gypsy v. Escoe (1927), 275 U. S. 498;

U. S. v. Seminole (1937), 299 U. S. 417;

Bowman v. Loperena (1940), 311 U. S. 262.

Federal procedure in the lower courts is thoroughly established in conformity with these decisions.

15.

The decision of the appellate court below in holding that an order issued by a conciliation commissioner on the same day that a creditors' motion seeking it was filed, without any notice that said motion would be filed or heard, is a valid and binding order, and within the power of the conciliation commissioner to issue it, is in conflict with the decisions of this court in the following cases:

Voorhees v. Jackson (1836), 35 U. S. (10 Pet.) 449, 474;

Galpin v. Page (1874), 85 U. S. (18 Wall.), 350, 368;

Windsor v. McVeigh (1876), 93 U. S. 274;

Holden v. Hardy (1898), 169 U. S. 366, 389;

Ballard v. Hunter (1907), 204 U. S. 241;

Twining v. New Jersey (1908), 211 U. S. 78, 102;

Coe v. Armour (1917), 237 U. S. 413, 426;

Morgan v. United States (1938), 304 U. S. 1, 18.

Said decision is likewise in conflict with other Circuit Court of Appeals decisions, namely:

Sheets v. Livy (1938), CCA 4, 97 Fed. (2d) 674;

In re Rosser (1900), CCA 8, 101 Fed. 106;

Boyd v. Glucklich (1902), CCA 8, 116 Fed. 131;

In re Frank (1910), CCA 8, 182 Fed. 794.

The last three cited cases hold that a referee may not issue an order granting a motion presented at a creditors' meeting without any notice thereof except the general notice that a creditors' meeting is to be held.

Said decision of the appellate court below has so far sanctioned a departure from the accepted and usual course of judicial proceedings by the lower district court as to call for an exercise of its power of supervision by this court. Said decision has sanctioned the violation of due process of law in proceedings pending in the bankruptcy court before the conciliation commissioner in that at the first creditors' meeting under Section 75(s) certain creditors, respondents here, presented a motion for the issuance of an order requiring the farmer debtor to pay a sum of \$6375 in addition to rent and said conciliation commissioner on the same day issued such an order, without any

notice whatever having been given to the farmer debtor or his counsel that such a motion would be presented or heard or that such an order would be considered or issued.

Said order was issued in violation of the Fifth Amendment to the Constitution of the United States which prohibits the deprivation of property without due process of law.

Wherefore your petitioner prays that a writ of certiorari may issue to the Circuit Court of Appeals for the Seventh Circuit directing it to certify and send to this court a transcript of the record and proceedings thereon so that this cause may be received and determined by this court. He further prays for all other relief that may be proper.

Respectfully submitted,

ELMER MCCLAIN,

Lima, Ohio.

Lima, Ohio

February 6, 1942.

Note: Section 2(10), Section 38, Section 39a (8) and c and Section 75 of the Bankruptcy Act are inserted following this page.

Sections of the Bankruptcy Act Which Are Involved.

Section 2. "The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested . . . with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act, in vacation, in chambers, and during their respective terms, as they are now or may be hereafter held, to . . ."

(10). "Consider records, findings, and orders certified to the judges by referees, and confirm, modify, or reverse such findings and orders, or return such records with instructions for further proceedings; . . ."

Section 38. "Referees are hereby invested, subject always to a view by the judge, with jurisdiction to" . . . [conduct specified proceedings in bankruptcy matters].

Section 39. "a. Referees shall" . . . "(8) prepare promptly and transmit to the clerks certificates on petitions for review of orders made by them, together with a statement of the questions presented, the findings and orders thereon, the petition for review, a transcript of the evidence or a summary thereof, and all exhibits; . . ."

"c. A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing." . . .

Section 75 follows.

AGRICULTURAL COMPOSITIONS AND EXTENSIONS

SECTION 75 OF THE BANKRUPTCY ACT AS
AMENDED BY—

PUBLIC 296 OF THE SEVENTY-THIRD CONGRESS
PUBLIC 60 OF THE SEVENTY-FOURTH CONGRESS
PUBLIC 384 OF THE SEVENTY-FOURTH CONGRESS
PUBLIC 439 OF THE SEVENTY-FIFTH CONGRESS
PUBLIC 696 OF THE SEVENTY-FIFTH CONGRESS
PUBLIC 423 OF THE SEVENTY-SIXTH CONGRESS

TITLE 11, SECTION 203, UNITED STATES CODE

(Reprint of Senate Document No. 55, 75th Congress)



PRESENTED BY MR. NYE
FOR MR. FRAZIER

JUNE 10 (legislative day, MAY 28), 1940.—Ordered to be printed
with certain corrections

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1940

AGRICULTURAL COMPOSITIONS AND EXTENSIONS

[PUBLIC—No. 420—72D CONGRESS]

[H. R. 14359]

AN ACT

To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," as amended by the Acts of February 5, 1903, June 15, 1906, June 25, 1910, March 2, 1917, January 7, 1922, May 27, 1926, and February 11, 1932, be, and it is hereby, amended by adding thereto a new chapter to read as follows:

"CHAPTER VIII

[As amended by the 73rd, 74th, 75th, and 76th Congresses]

"PROVISIONS FOR THE RELIEF OF DEBTORS

"SEC. 75. AGRICULTURAL COMPOSITIONS AND EXTENSIONS.—(a) Within thirty days after June 7, 1934, every court of bankruptcy of which the jurisdiction or territory includes a county or counties having an agricultural population (according to the last available United States census) of five hundred or more farmers shall appoint one or more referees to be known as 'conciliation commissioners', one such conciliation commissioner to be appointed for each county having an agricultural population of five hundred or more farmers according to said census: *Provided further,* That where any county in any such district contains a smaller number of farmers according to said census, for the purposes of this paragraph such county shall be included with one or more adjacent counties where the population of the counties so combined includes five hundred or more farmers, according to said census. In case more than one conciliation commissioner is appointed for a county, each commissioner shall act separately and shall have such territorial jurisdiction within the county as the court shall specify. A conciliation commissioner shall have a term of office for one year and may be removed by the court if his services are no longer needed or for other cause. No individual shall be eligible to appointment as a conciliation commissioner unless he is eligible for appointment as a referee¹ and in addition is a resident

¹Sec. 35 of Chandler Act, Public, 696, of the 75th Cong., requires all new referees to be attorneys.

of the county, familiar with agricultural conditions therein and not engaged in the farm-mortgage business, the business of financing farmers or transactions in agricultural commodities or the business of marketing or dealing in agricultural commodities or of furnishing agricultural supplies. In each judicial district the court may, if it finds it necessary or desirable, appoint a suitable person as a supervising conciliation commissioner. The supervising conciliation commissioner shall have such supervisory functions under this section as the court may by order specify.

"(b) Upon filing of any petition by a farmer under this section there shall be paid a fee of \$10 to be transmitted to the clerk of the court and covered into the Treasury. The conciliation commissioner shall receive as compensation for his services, a fee of \$25 for each case submitted to him, ~~and when docketed, to be paid out of the Treasury to be paid out of the Treasury when the conciliation commissioner completes the duties assigned to him by the court.~~ A supervising conciliation commissioner shall receive, as compensation for his services, a per diem allowance to be fixed by the court, in an amount not in excess of \$5 per day, together with subsistence and travel expenses in accordance with the law applicable to officers of the Department of Justice. Such compensation and expenses shall be paid out of the Treasury. If the creditors at any time desire supervision over the farming operations of a farmer, the cost of such supervision shall be borne by such creditors or by the farmer; as may be agreed upon by them, but in no instance shall the farmer be required to pay more than one-half of the cost of such supervision. Nothing contained in this section shall prevent a conciliation commissioner who supervises such farming operations from receiving such compensation therefor as may be so agreed upon. No fees, costs, or other charges shall be charged or taxed to any farmer or his creditors by any conciliation commissioner or with respect to any proceeding under this section, except as hereinbefore in this section provided. The conciliation commissioner may accept and avail himself of office space, equipment, and assistance furnished him by other Federal officials, or by any State, county, or other public officials. The Supreme Court is authorized to make such general orders as it may find necessary properly to govern the administration of the office of conciliation commissioner and proceedings under this section; but any district court of the United States may, for good cause shown and in the interests of justice, permit any such general order to be waived.

"(c) At any time within 5 years after March 3, 1933, prior to March 4, 1944, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time to pay his debts. The petition or answer of the farmer shall be accompanied by his schedules. The petition and answer shall be filed with the court, but shall, on request of the farmer or creditor, be received by the conciliation commissioner for the county in which the farmer resides and promptly transmitted by him to the clerk of the court for filing. If any such petition is filed, an order of adjudication shall not be entered except as provided hereinafter in this section.

"(d) After the filing of such petition or answer by the farmer, the farmer shall, within such time and in such form as the rules provide, file an inventory of his estate.

"(e) The conciliation commissioner shall promptly call the first meeting of creditors, stating in the notice that the farmer proposes to offer terms of composition or extension, and inclosing with the notice a summary of the inventory, a brief statement of the farmer's indebtedness as shown by the schedules, and a list of the names and addresses of the secured creditors and unsecured creditors, with the amounts owing to each as shown by the schedules. At the first meeting of the creditors the farmer may be examined, and the creditors may appoint a committee to submit to the conciliation commissioner a supplementary inventory of the farmer's estate. The conciliation commissioner shall, after hearing the parties in interest, fix a reasonable time within which application for confirmation shall be made, and may later extend such time for cause shown. After the filing of the petition and prior to the confirmation or other disposition of the composition or extension proposal by the court, the court shall exercise such control over the property of the farmer as the court deems in the best interests of the farmer and his creditors.

"(f) There shall be prepared by, or under the supervision of, the conciliation commissioner a final inventory of the farmer's estate, and in the preparation of such inventory the commissioner shall give due consideration to the inventory filed by the farmer and to any supplementary inventory filed by a committee of the creditors.

"(g) An application for the confirmation of a composition or extension proposal may be filed in the court of bankruptcy after, but not before, it has been accepted in writing, by a majority in number of all creditors whose claims have been allowed, including secured creditors whose claims are affected, which number shall represent a majority in amount of such claims.

"(h) A date and place, with reference to the convenience of the parties in interest, shall be fixed for a hearing upon each application for the confirmation of the composition or extension proposal and upon such objections as may be made to its confirmation.

"(i) The court shall confirm the proposal if satisfied that (1) it includes an equitable and feasible method of liquidation for secured creditors and of financial rehabilitation for the farmer; (2) it is for the best interests of all creditors; and (3) the offer and its acceptance are in good faith, and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden. In applications for extensions the court shall require proof from each creditor filing a claim that such claim is free from usury as defined by the laws of the place where the debt is contracted.

"(j) The terms of a composition or extension proposal may extend the time of payment of either secured or unsecured debts, or both, and may provide for priority of payments to be made during the period of extension as between secured and unsecured creditors. It may also include specific undertakings by the farmer during the period of the extension, including provisions for payments on account, and may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period, and for the termination of such period of supervision or control under conditions specified: *Provided*, That the provisions of this section shall not affect the allowances and exemptions to debtors as are provided for bankrupts under title 11, chapter 3, section 24,

of the United States Code, and such allowances and exemptions shall be set aside for the use of the debtor in the manner provided for bankrupts.

"(k) Upon its confirmation, a composition or extension proposal shall be binding upon the farmer and his secured and unsecured creditors affected thereby: *Provided, however,* That such extension and/or composition shall not reduce the amount of or impair the lien of any secured creditor below the fair and reasonable market value of the property securing any such lien at the time that the extension and/or composition is accepted, but nothing herein shall prevent the reduction of the future rate of interest on all debts of the debtor, whether secured or unsecured.

"(l) Upon the confirmation of a composition the consideration shall be distributed under the supervision of the conciliation commissioner as the court shall direct, and the case dismissed: *Provided,* That the debts having priority of payment under title 11, chapter 7, section 104, of the United States Code, for bankrupt estates, shall have priority of payment in the same order as set forth in said section 104 under the provisions of this section in any distribution, assignment, composition, or settlement herein provided for. Upon the confirmation of an extension proposal the court may dismiss the proceeding or retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate and enforce through the conciliation commissioner the terms of the extension proposal. The court may, after hearing and for good cause shown, at any time during the period covered by an extension proposal that has been confirmed by the court, set the same aside, reinstate the case, and modify the terms of the extension proposal.

"(m) The judge may, upon the application of any party in interest, file at any time within six months after the composition or extension proposal has been confirmed, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition or extension, and that knowledge thereof has come to the petitioners since the confirmation thereof.

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirma-

tion of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. The words 'period of redemption' wherever they occur in this section shall include any State moratorium, whether established by legislative enactment or executive proclamation, or where the period of redemption has been extended by a judicial decree. In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding same to the clerk of court."

"(o) Except upon petition made to and granted by the judge after hearing and report by the conciliation commissioner, the following proceedings shall not be instituted, or if instituted at any time prior to the filing of a petition under this section, shall not be maintained, in any court or otherwise, against the farmer or his property, at any time after the filing of the petition under this section, and prior to the confirmation or other disposition of the composition or extension proposal by the court:

"(1) Proceedings for any demand, debt, or account, including any money demand;

"(2) Proceedings for foreclosure of a mortgage on land, or for cancellation, rescission, or specific performance of an agreement for sale of land or for recovery of possession of land;

"(3) Proceedings to acquire title to land by virtue of any tax sale;

"(4) Proceedings by way of execution, attachment, or garnishment;

"(5) Proceedings to sell land under or in satisfaction of any judgment or mechanic's lien; and

"(6) Seizure, distress, sale, or other proceedings under an execution or under any lease, lien, chattel mortgage, conditional sale agreement, crop payment agreement, or mortgage.

"(p) The prohibitions of subsection (o) shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located. All such property shall be under the sole jurisdiction and control of the court in bankruptcy, and subject to the payment of the debtor farmer's creditors, as provided for in section 75 of this Act."

"(q) A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section.

"(r) For the purposes of this section, and section 4 (b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy

farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

"(s) Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition and/or extension proposal, or if he feels aggrieved by the composition and/or extension, may amend his petition or answer, asking to be adjudged a bankrupt. Such farmer may, at the same time, or at the time of the first hearing, petition the court that all of his property, wherever located, whether pledged, encumbered, or unencumbered, be appraised, and that his unencumbered exemptions, and unencumbered interest or equity in his exemptions, as prescribed by State law, be set aside to him, and that he be allowed to retain possession, under the supervision and control of the court, of any part or parcel or all of the remainder of his property, including his encumbered exemptions, under the terms and conditions set forth in this section. Upon such a request being made, the referee, under the jurisdiction of the court, shall designate and appoint appraisers, as provided for in this Act. Such appraisers shall appraise all of the property of the debtor, wherever located, at its then fair and reasonable market value. The appraisals shall be made in all other respects with rights of objections, exceptions, and appeals, in accordance with this Act: *Provided*, That in proceedings under this section, either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal.

"(1) After the value of the debtor's property shall have been fixed by the appraisal herein provided, the referee shall issue an order setting aside to such debtor his unencumbered exemptions, and his unencumbered interest or equity in his exemptions, as prescribed by the State law, and shall further order that the possession, under the supervision and control of the court, of any part or parcel or all of the remainder of the debtor's property shall remain in the debtor, as herein provided for, subject to all existing mortgages, liens, pledges, or encumbrances. All such existing mortgages, liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such mortgages, liens, pledges, or encumbrances shall be subject to the payment of the claims of the secured creditors, as their interests may appear.

"(2) When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of three years. During such three years the debtor shall be permitted to retain possession of all or any part of his property, in the custody and under the supervision and control of the court, provided he pays a reasonable rental semiannually for that part of the property of which he retains possession. The first payment of such rental shall be made within one year of the date of the order staying proceedings, the amount and kind of such rental to be the usual customary rental in the community where the property is located, based upon the rental value, net income, and

earning capacity of the property. Such rental shall be paid into court, to be used, first, for payment of taxes and upkeep of the property, and the remainder to be distributed among the secured and unsecured creditors, and applied on their claims, as their interests may appear. The court, in its discretion, if it deems it necessary to protect the creditors from loss by the estate, and/or to conserve the security, may order sold any unexempt perishable property of the debtor, or any unexempt personal property not reasonably necessary for the farming operations of the debtor, such sale to be had at private or public sale, and may, in addition to the rental, require payments on the principal due and owing by the debtor to the secured or unsecured creditors, as their interests may appear, in accordance with the provisions of this Act, and may require such payments to be made quarterly, semiannually, or annually, not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.

"(3) At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession; including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: *Provided*, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.

"(4) The conciliation commissioner, appointed under subsection (a) of section 75 of this Act, as amended, shall continue to act, and act as referee, when the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt under the provisions of subsection (s) of section 75 of this Act, and continue so to act until the case has been finally disposed of. The conciliation commissioner, as such referee, shall receive such an additional fee for his services as may be allowed by the court, not to exceed \$35 in any case, to be paid out of the bankrupt's estate. No additional fees or costs of administration or supervision of any kind shall be charged to the farmer debtor when or after he amends his petition or answer, asking to be adjudged a bankrupt, under subsection (s) of section 75 of

this Act, but all such additional filing fees or costs of administration or supervision shall be charged against the bankrupt's estate. Conciliation commissioners and referees appointed under section 75 of this Act shall be entitled to transmit in the mails, free of postage, under cover of a penalty envelope, all matters which relate exclusively to the business of the courts, including notices to creditors. If at the time that the farmer debtor amends his petition or answer, asking to be adjudged a bankrupt, a receiver is in charge of any of his property, such receiver shall be divested of possession, and the property returned to the possession of such farmer, under the provisions of this Act. The provisions of this Act shall be held to apply also to partnerships, common, entirety, joint, community ownerships, or to farming corporations where at least 75 per centum of the stock is owned by actual farmers, and any such parties may join in one petition.

"(5) This Act shall be held to apply to all existing cases now pending in any Federal court, under this Act as well as to future cases; and all cases that have been dismissed by any conciliation commissioner, referee, or court because of the Supreme Court decision holding the former subsection(s) unconstitutional, shall be promptly reinstated, without any additional filing fees or charges."

"(5) This Act shall be held to apply to all existing cases now pending in any Federal Court, under this Section, as well as to future cases. All cases under this Section that have been dismissed by any conciliation commissioner, referee, or Federal Court because such Court erroneously assumed or held that subsection(s) of section 75 of this Act was unconstitutional, shall be promptly reinstated, without any additional filing fees or charges. Any farm debtor who has filed under the General Bankruptcy Act may take advantage of this section upon written request to the court; and a previous discharge of the debtor under any other section of this Act shall not be grounds for denying him the benefits of this section."

"(6) This Act is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay of proceedings herein provided for and proceeded to liquidate the estate."

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BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

This brief will be confined, as strictly as possible, to the subject of the petition it supports.

Copies (applicable portions) of Section 2(10), 38 and 39a(8) and (c) and the whole of Section 75 of the Bankruptcy Act are inserted for reference preceding this brief and following the petition for certiorari.

The digest of cases referred to in this brief is collected in a "Supplemental Brief" filed herewith.

I.

Subject Index

The subject index precedes the Petition for Certiorari.

II.

THE REPORT OF THE OPINION BELOW.

The opinion of the Appellate Court below is reported as *Pfister v. Northern Illinois Finance Corporation*, CCA 7, 123 Fed. (2d) 523, decided November 10, 1941: R. 209 to 215.

The District Court below issued no opinion. The two final orders of the District Court are found at R. 173 to 178.

III.

THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The grounds on which the jurisdiction of this court is invoked has been set out at pages 10 to 24 of the preceding petition for certiorari under the headings: "Statement of the Basis of the Jurisdiction of this Court," "The Questions Presented," and "Reasons Relied Upon for the Allowance of a Writ of Certiorari."

IV.

A CONCISE STATEMENT OF THE CASE.

The Farmer Debtor and His Property.

The petitioner is a farmer debtor who owns, and with his family, resides upon and operates an 80 acre dairy farm in Illinois. His other property consists of approximately 20 cows, 1 bull, 3 horses, 20 hogs, and 130 chickens, together with the usual implements and other equipment necessary to operate such a dairy farm. R. 14, R. 20, R 70 to 72.

The Farmer Debtor Law Invoked.

Becoming indebted beyond his ability to pay, he filed his farmer debtor petition for composition or extension of his debts under Section 75 of the Bankruptcy Act. Failing to obtain a settlement with his creditors, he amended his petition pursuant to Section 75(s) of that Act in order to obtain the three year statutory stay while paying rental, pending his eventual rehabilitation by redeeming his mortgaged property at its appraised valuation.

Incapacity of Farmer Debtor's Counsel.

After the amended petition had been filed and before the first creditors' meeting under it, the farmer debtor's counsel, J. E. Dazey, Esq., became incapacitated as a result of a stroke of apoplexy and participated no further in the case except to prepare his affidavit which described his physical condition. R. 34.

Mr. Dazey resided in another federal court district of the State of Illinois and in compliance with a local court rule, he had designated a young local attorney, Robert E. Coulson, Esq., as co-counsel for the purpose of filing papers, and receiving service. The farmer debtor did not engage Mr. Coulson and he was not authorized to represent the farmer debtor in any substantive capacity, nor did he attempt to do so. R. 30, par. 6. Verification of Robert E. Coulson: R. 34, top of page. R. 34, bottom of page and top of R. 35. R. 89, par. 2. R. 94 to 95. R. 146 par. 15. Denied by creditors: R. 36, par. 6. R. 97, par. 2. R. 154, par. 10.

Since his incapacity Mr. Dazey has not participated in the proceeding except to prepare his affidavit which appears at R. 34. Mr. Coulson has not participated in the proceeding since shortly after the orders complained of except to verify the petition of the farmer debtor to the Judge of the District Court for a restraining order which sought to stop a sale then believed to be imminent and to make his affidavit as part of the petition for rehearing of the purported orders of September 7, 1940. R. 27 to 35. His verification noted at R. 34, top of page. R. 94.

First Creditors' Meeting.

Order of August 13, 1940, approving appraisal, staying proceedings, fixing rental and principal payments (R. 9, entry of August 13, 1940. R. 10, entries of August 13, 1940. R. 72 to 77.)

On August 13, 1940, was held the first creditors' meeting under the amended petition pursuant to Section 75(s). At that meeting the conciliation commissioner approved the appraisal and set off the farmer debtor's exemptions. R. 10, entries of August 13, 1940. R. 69 to 72.

On the same day, without any preliminary notice whatever, three of the respondents presented motions praying that rent be set at \$6,375 for three years and that additional payments on the principal of debts be ordered paid in the sum of \$6,375 making a total of \$12,750 to be paid within the three-year period. R. 9, entry of August 13, 1940. These motions were granted on the same day by ordering the total of \$12,750 to be paid by the farmer debtor within 2 years, 8 months, and 18 days. Rental was to be paid semi-annually while the principal payments were to be made quarterly. The estate from which, under the statute, this sum of \$12,750 was to be obtained out of its earnings, as well as whatever would be needed to achieve rehabilitation of the estate at its appraised value, was comprised of the real estate appraised at \$16,000 and un-exempt chattels appraised at \$1,786.00.

The order of August 13, 1940, also stayed proceedings for two years, eight months and 13 days from that date. That is, a so-called three-year statutory stay was made to run, not from the entry of the order as required by the statute, but from April 26, 1940. The last payment was ordered to

be made by April 26, 1943. R. 9, entry of August 13, 1940. R. 72 to 77. Sec. 75(s)(2). *Wright v. Union Central*, 311 U.S. 273, 275, citing *John Hancock v. Bartels*, 308 U.S. 180 and *Borchard v. California*, 310 U.S. 311.

Adjourned Creditors' Meeting.

The Purported Orders of September 7, 1940 (R. 10, entry of September 7, 1940; R. 40, Exhibit "B". R. 77. R. 80. R. 82).

The creditors' meeting of August 13, 1940, was adjourned to September 7, 1940, when three additional orders are purported to have been issued. The uncertainty concerning the actual time of entry of these three orders is discussed at page 53 of this brief under heading "Sixth."

Creditors' petitions for reclamation of mortgaged chattels were pending before the conciliation commissioner. R. 8 to 9, entries of August 7, August 8, and August 10, 1940. Those granted appear at R. 42 to 48, R. 48 to 60, and R. 60 to 65. The orders issued in compliance with them ordered sold as "perishable property," the farmer debtor's cows, bull, horses, sows, farm machinery and his 1939 crops. R. 77 to 88. He would have left, after this shearing, with which to comply with the rental, principal payment and stay order of August 13, 1940, and to accomplish his rehabilitation, his farm and these chattels: household goods worth \$105; 4 heifers worth \$50; 15 pigs worth \$20; 130 hens worth \$50; and an automobile worth \$275 and which was mortgaged for its full value. R. 18. R. 71. Total \$510 of which \$235 was free of mortgage.

The Effect of the Orders of August 13 and September 7, 1940.

A general recapitulation of his financial obligation to the court under the orders of August 13 and of September 7, 1940, shows that out of his 80 acre farm and \$510 worth of chattels he would, within 2 years, 8 months and 13 days, have to find, as a result of these two orders:

1.

The Following Payments

August 28, 1940	\$ 406.25
October 26, 1940	1,218.75
January 26, 1941	406.25
April 26, 1941	1,218.75
July 26, 1941	531.25
October 26, 1941	1,593.75
January 26, 1942	531.25
April 26, 1942	1,593.75
July 26, 1942	656.25
October 26, 1942	1,968.75
January 26, 1943	656.25
April 26, 1943	1,968.75

Total to meet the combined orders of August 13 and September 2, 1940 within 2 years 8 months 13 days	\$12,750.00
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2.

By April 26, 1943, the farmer debtor would be confronted with the necessity of redeeming his farm and automobile pursuant to Section 75(s)(3) by paying their appraised value less payments on principal. The appraisal of the farm was \$16,000. R. 69 to 70. The automobile was appraised at \$275. R. 71.

There are other liens against the farm (R. 17 to 18), of more than \$6000. The rent payments would be applied first to upkeep and taxes. Section 75(s)(2). Delinquent taxes alone were \$1028.32 on June 12, 1940. R. 6, entry of June 12, 1940. Current taxes are not stated. After upkeep and taxes were paid the balance of rent payments would be paid to creditors "as their interests may appear." The first mortgage bears 7 per cent. R. 16. After paying \$12,750 within 2 years, 8 months and 13 days, he probably would find himself with the same financial situation that confronted him in the beginning.

The result would inevitably be that he could not rehabilitate himself. Yet Section 75(s)(2), makes the power of the conciliation commissioner to order principal payments conditioned upon "the debtor's ability to pay, with a view to his financial rehabilitation." Section 75(s)(2).

Application for Emergency Restraining Order Against the Conciliation Commissioner (R. 27 to 34).

In September the farmer debtor heard that his chattels were to be sold or advertised for sale upon order of the conciliation commissioner, but his new counsel retained for the purpose of stopping the sale and securing redress from the stay, rental and extra payment order, was unable to find any such order. R. 32, paragraphs 8 and 9. Verification by Robert Coulson, local attorney, noted at R. 34, top of page. R. 90, par. 3. The farmer debtor therefore on September 17, 1934, filed his petition for an order restraining the conciliation commissioner from selling his chattels. R. 27 to 34. It was denied by the judge of the District Court by his order entered September 19, 1934 (R. 41), alternative remedies being deemed adequate.

Petitions for Rehearing and Their Denial.

On September 16, 1940, the farmer debtor filed with the conciliation commissioner his petition for rehearing of the stay, rental and principal payment order of August 13, 1940. R. 139 to 147. The affidavits of Attorneys Dazey and Coulson therein referred to are at R. 34 to R. 94. To this petition for rehearing a motion by the creditors to dismiss for want of jurisdiction in the conciliation commissioner to hear it was overruled. R. 148. R. 149 to 150. The creditors then filed answers. R. 151 to 157. The conciliation commissioner, after a hearing, and after considering the whole proceeding denied the petition for rehearing on November 28, 1940. R. 158 to 164. R. 13, entry of November 28, 1940.

On September 20, 1940, he filed with the conciliation commissioner his petition for rehearing of the three "perishable property" sale orders of September 7, 1940. R. 88 to 96. An oral motion to dismiss this petition for rehearing for want of jurisdiction in the conciliation commissioner to hear them was denied although the record does not show it.

Answers were filed by the creditors. R. 97 to 108. The conciliation commissioner after a hearing and after fully considering the petition for rehearing and the whole proceeding denied it. R. 11, entries of September 20, September 23, September 26 and September 30, 1940. R. 109 to 116.

Petitions for Review.

On November 28, 1940, a petition for review of the order of August 13 relating to rental, principal payments and

This statement was also made in the Appellate Court below ("Appellant's Brief" at pages 13 to 14) and in the oral argument. It has never been denied.

stay was filed with the conciliation commissioner. R. 165 to 172. It was duly certified by the conciliation commissioner to the District Court. R. 172 to 173.

On October 9, 1940, a petition for review of the three orders of September 7, 1940, for the sale of the farmer debtor's chattels as "perishable property" was filed with the conciliation commissioner. R. 116 to 129. It was also duly certified by the conciliation commissioner to the District Court. R. 130 to 132.

Dismissal by the District Court of the Petitions for Review.

On December 16, 1940, the District Court dismissed both petitions for review upon the ground, in each instance, that there was no jurisdiction to hear them. R. 173 to 178.

Affirmance by the Circuit Court of Appeals.

The Circuit Court of Appeals affirmed the dismissals by the District Court. Opinion, R. 209 to 215. *Pfister v. Northern Illinois*, 123 Fed. (2d) 543. Final orders R. 215 to 216. Petition for rehearing denied. R. 220. Mandate stayed to February 14, 1942, pending application for certiorari. R. 233.

V.

SPECIFICATION OF ERRORS.

1.

The Appellate Court erred in holding that the District Court did not have jurisdiction to hear a petition for review which was filed within the four-months period following approval of the appraisal, as fixed by Section 75(s).

2.

The Appellate Court erred in holding that the District Court had no jurisdiction to hear petition for review which was filed within 10 days after the denial of a petition for rehearing of an order complained of, no right having intervened, and said petition for rehearing having been entertained and considered, and the entire proceeding having been considered by the conciliation commissioner.

3.

The Appellate Court erred in holding that the District Court had no jurisdiction to hear a petition for review of a void order of a conciliation commissioner unless such petition for review was filed within ten days of the entry of such void order.

4.

The Appellate Court erred in holding that the District Court had no jurisdiction, while a farmer debtor proceeding was still pending, to hear a petition for review of an order entered by a conciliation commissioner, regardless of when such petition for review was filed.

5.

The Appellate Court erred in holding that Section 39(c) of the Bankruptcy Act in naming ten days for the filing of a petition for review is a statutory limitation and not a rule of procedure.

6.

The Appellate Court erred in holding that Section 2(10) of the Bankruptcy Act is limited by Section 39(c) of that act.

7.

The Appellate Court erred in holding that Section 38 of the Bankruptcy Act is limited by Section 39(c) of that Act.

8.

The Appellate Court erred in holding, in a farmer debtor proceeding pending before a conciliation commissioner where a petition for rehearing of an order is filed, no right having intervened, and said petition for rehearing is entertained by the conciliation commissioner who overrules a motion to dismiss it for lack of jurisdiction to entertain it, and considers the whole proceeding and then denies the petition, that the time for seeking a review of said order does not run from the date of the denial of such petition for rehearing.

9.

The Appellate Court erred in holding that in a farmer debtor proceeding the period named in Section 39(c) of the Bankruptcy Act limits the time within which a petition for rehearing of an order may be filed with a conciliation commissioner, no right having intervened.

10.

The Appellate Court erred in holding that a conciliation commissioner in a farmer debtor proceeding may not entertain or consider a petition for rehearing of his order except when such petition is filed within ten days of the entry of the order, even though no right has intervened.

11.

The Appellate Court erred in sustaining the District Court in declining to hear and in dismissing, on the ground of lack of jurisdiction, a petition for review of the order

of the conciliation commissioner which fixed the statutory stay and rental period in the farmer debtor proceeding to run from a date prior to the approval of the appraisal and prior to the order setting aside exemptions.

12.

The Appellate Court erred in sustaining the District Court in declining to hear, and in dismissing, on the ground of lack of jurisdiction, a petition for review of the statutory order of the conciliation commissioner which stayed proceedings and permitted possession to be retained by the farmer debtor upon payment of rental, and made the time of such stay and possession less than three years.

13.

The Appellate Court erred in sustaining the District Court in declining to hear, and in dismissing, upon the ground of lack of jurisdiction, a petition for review of an order of the conciliation commissioner which ordered sold as perishable property the farmer debtor's cows, bull, horses, sows, farm machinery and farm crops consisting of corn, soy beans, hay fodder, ensilage, oats, barley, rye and wheat.

14.

The Appellate Court erred in sustaining the District Court in declining to hear, and in dismissing, upon the ground of lack of jurisdiction, a petition for review of an order by a conciliation commissioner ordering the farmer debtor to pay as rental and as payments on the principal of his debts, within 2 years, 8 months and 13 days, the total sum of \$12,750 where the appraisal of all the real estate is \$16,000 and the appraisal of all the unexempt chattels is \$1,786.

The Appellate Court erred in sustaining the District Court in declining to hear, and dismissing, upon the ground of lack of jurisdiction, a petition for review of an order of the conciliation commissioner, when proceedings for obtaining such review had been perfected by the filing of a petition for review by a person aggrieved by such order and the serving of a copy of said petition upon the proper adverse parties, and when the conciliation commissioner had duly prepared and transmitted to the clerk his certificate on said petition for review, all in compliance with Section 39(c) of the Bankruptcy Act, such dismissal being based upon the sole reason that said petition for review was not filed within ten days after the original entry of the order complained of.

VI.

SUMMARY OF THE ARGUMENT

The substantive acts of the conciliation commissioner would deprive the farmer debtor of his farm in violation of the express provisions of Section 75 designed to save it to him and are void. The procedures by which they would be accomplished are subversive of the purpose of the law. Due process of law was violated.

The opinion of the appellate court when compared with the statutes and decisions it rests upon is found to be inconsistent with them.

In holding that the express provisions of Section 75 are limited by other general provisions of the Bankruptcy Act the decision below, if followed, would destroy the farmer debtor law.

In holding that a petition for rehearing, if entertained and considered, does not expunge the finality of an order so that if denied the time for appeal from the order runs from the denial, the decision below runs counter to a principle of law as old as American Jurisprudence.

In holding that a district court has no jurisdiction or power to hear a petition for review, certified to it by a referee, if the petition for review was filed more than ten days after the original entry of an order, the appellate court runs counter to the uniform holdings of other circuits and sustains the district court in a holding inconsistent with that court's former ruling by the same judge in accord with the generally recognized rule.

The holding that orders in direct violation of express statutory provision in Section 75 may not be corrected, while a farmer debtor proceeding is pending, is contrary to the long established holdings of this court and of the lower courts. Reference is here had to orders: (1) starting the stay period at a date preceding the entry of the order which declared it, (2) fixing a rental impossible to earn from the estate, (3) fixing impossible extra principal payments, and (4) ordering sold the farmer debtor's dairy cows, bull, sows, horses, farm machinery and crops, all done ostensibly by authority of the statute itself.

VII.

ARGUMENT.

The General Nature of the Orders

(1) Their Relation to Substantive Rights.

Had the substantive acts of the conciliation commissioner of the Bankruptcy Court below first been narrated in fictional form, they would probably have been considered too fantastic to conform to actuality. They were orders providing for:

1. A foreshortened stay period of 2 years, 8 months and 13 days, violative of Section 75(s)(2), and of the pronouncement of this court in *Wright v. Union Central*, 311 U.S. 273, 275, citing *John Hancock v. Bartels*, 308 U.S. 180, and *Borchart v. California*, 310 U.S. 311.

2. A rental of \$6,375 for the foreshortened stay period on an 80 acre, 20 cow dairy farm, violative of Section 75(s)(2) which requires that "the amount and kind of such rental to be the **usual customary rental** in the community where the property is located, **based upon the rental value, not income, and earning capacity of the property.**"

3. Extra payments of \$6,375 within the foreshortened stay period, levied, ostensibly, under power granted in Section 75(s)(2) which provides that "The court . . . may, in addition to the rental, require payments on the principal due and owing by the debtor . . . in payments to be made quarterly, semi-annually or annually, **not inconsistent with the protection of the rights of the creditors and the debtor's ability to pay, with a view to his financial rehabilitation.**"

4. The sale of all the farmer's cows, bull, horses, sows, farm machinery, and crops, leaving him his household goods, four heifers, 15 pigs, 130 hens and an automobile mortgaged to its full value.

(2) The Procedures Employed.

The various procedures whereby these actions were accomplished before the conciliation commissioner in the Bankruptcy Court below, while not so extravagantly fantastic, were nevertheless violative of the well recognized and long established principles of English and American Jurisprudence which are proudly heralded as part of the amenities of our legal system which distinguish it from others and are held up as examples of the progress of our civilization. They are all the more dangerous, and subversive to the accepted and usual course of judicial procedure, in that they were packaged in forms intended to carry out the intentions of the law of and established procedure. A perusal of the order of August 13, 1940, at R. 72 to 77, and of the three orders of September 7, 1940, at R. 77 to 88 discloses their design.

The Decision of the District Court Examined.

It has already been shown, at page 19 of the preceding petition, under paragraph 10, that the final orders of the District Court below were in conflict with its own decision in *In re Madonia*, (1940), District Court of Illinois, 32 Fed. Sup. 165, where it held that Section 39(c) does not limit the hearing of a petition for review. See Case No. 31, at page 25, the "Supplemental Brief" herein.

The Opinion of the Circuit Court of Appeals Examined.

1.

The opinion reads: R. 210, last paragraph:

"Appellant first contends that Section 75(s) and not Section 39(c) governs appeals and reviews in farmer debtor cases."

R. 211, bottom of page, R. 212, top of page —:

"Our duty is to so construe both sections, if reasonably possible, that both may be effective. This can be done by construing the word "section" in the first paragraph of Section 75(s) to refer only to the part of that paragraph which precedes the proviso, and we thus construe it. The orders here complained of did not arise under this paragraph, but were entered in the course of hearings authorized under Section 75 (s)(4). Hence we think Section 39(c) is controlling here."

The applicable portion of Section 39(c) reads as follows:

"c. A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court may for cause show allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing." . . .

In *Benitez v. Benk*, 313 U. S. 270, No. 5 at page 5 of the "Supplemental Brief" herein, this court made it very clear that Section 75 is supreme over all conflicting provisions of other portions.

The opinion of the Appellate Court below reads: R. 212, middle of page —:

"Appellant further contends that if Section 39(c) is controlling, his petitions for review were filed in time. His argument in this respect is that his petitions for rehearing stopped the running of time for seeking review; that the finality of the orders of August 13, 1940, and September 7, 1940, was in each instance expunged by a petition for rehearing which he says was seasonably filed, entertained, and denied by the conciliation commissioner.

In support of this contention he relies upon *Bowman v. Lopereno*, 311 U. S. 262; *Wayne Gas Co. v. Owens-Illinois Co.*, 300 U. S. 131; *United States v. Seminole*, 299 U. S. 417, and analogous cases. The facts in these cases are to be distinguished from those of the case at bar in that the petitions for rehearing were granted, the old judgment was vacated, and a new judgment entered after a rehearing on the merits (as in *Wayne Co. v. Owens-Illinois Co.*, supra), or on the ground that the petitions for rehearing were filed within the time provided for appeal, and the order complained of had never become final until the disposal of the petition (as in *Bowman v. Lopereno*, supra). In the present case the petitions for rehearing were not filed within the time allowed for appeal, and each was denied."

With the utmost respect to the Circuit Court of Appeals below it is suggested that not only the three decisions expressly mentioned by the Appellate Court but also those referred to as "analogous cases," all of which were cited by the petitioner as appellant below, support the law as contended in his behalf there.

Analysis of the Cases Referred to by the Appellate Court.

The following analysis of the cases cited and referred to by the appellate court is here presented. There were twelve of them. They are listed below.

It is said in the appellate court's opinion that all these cases are distinguished from the *Pfister* case at bar in that in them the following statements applied which do not apply to this case:

- Statement 1. The petitions for rehearing were granted;
- Statement 2. The old judgment was vacated;
- Statement 3. A new judgment was entered;
- Statement 4. Or the petition for rehearing were filed within the time for appeal.

As to statements 1, 2, 3, or 4, they are correct or incorrect as to the cases cited, as follows:

The Three Cases and the "Analogous Cases."

	Statement 1	Statement 2	Statement 3	Statement 4
Brockett v. Brockett, 1843 43 U. S. (2 How.) 283. Case No. 10, p. 9 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Incorrect
Texas v. Murphy, 1844 111 U. S. 487. Case No. 52, p. 39 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Not stated
Aspen v. Brilings, 1893 150 U. S. 31. Case No. 4, page 3 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct
Kingman v. Western, 1898 170 U. S. 675. Case No. 30, page 24 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct
United States v. Ellicott, 1912 233 U. S. 524. Case No. 6, p. 42 of the "Supplemental Brief" here- in	Incorrect	Incorrect	Incorrect	Correct
Citizens v. Opperman, 1919 249 U. S. 488. Case No. 14, p. 12 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Not stated
Morse v. United States, 1926 270 U. S. 151. Case No. 35, p. 47 29 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct
Gypsy v. Escos, 1927 275 U. S. 498. Case No. 22, p. 19 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Incorrect
United States v. Seminole, 1937 299 U. S. 412. Case No. 58, p. 44 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Incorrect
Wayne v. Owens Illinois, 1937 300 U. S. 131. Case No. 62, p. 46 of the Supplemental Brief herein	Correct	Correct	Correct	Incorrect
Bowman v. Laperena, 1940 311 U. S. 262. Case No. 8A, p. 7 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Incorrect
Carpenter v. Condor, 1939 108 F.2d (2d) 318. Case No. 12, p. 11 of the "Supplemental Brief" herein	Incorrect	Incorrect	Incorrect	Correct

² But see abstract of the case at No. 52, page 39 of the "Supplemental Brief" herein.

³ But see abstract of the case at No. 14, page 12 of the "Supplemental Brief" herein.

Thus the analysis of all the cases cited demonstrates that the statements in the opinion are correct or incorrect as a whole as follows:

	Correct	Incorrect	Not Shown	Total
1. Petition for rehearing were granted	once	Eleven times		12
2. Old judgment vacated	once	Eleven times		12
3. New judgment entered	once	Eleven times		12
4. Petition for rehearing in time for appeal	five times	five times	twice*	12

Total 48

Recapitulation:

Correct	8 times
Incorrect	38 times
Not Shown	2 times

Total 48 times

* But see Notes 2 and 3. These "not-stated" instances really belong in the "Incorrect" column making the score: Correct 8 times, Incorrect 40 times.

These cases, whether considered separately or as a whole, establish the long observed rule that the finality of an order for the purpose of appeal, is expunged by an application for rehearing which is seasonably filed, entertained, considered, and denied, the order becoming final for the purpose of appeal upon the denial of the application for rehearing.

3.

The opinion of the Appellate Court reads:

R. 213, middle of page:

"Another distinguishing feature is that it is quite apparent from the record here that **appellant's petition for rehearing was filed merely for the purpose of reviving and extending the time for filing a petition for review**, under which state of facts the court in the *Wayne* case said an appeal should be dismissed."

Again the appellant must respectfully differ from the appellate court's interpretation of the record. The record speaks again and again of the earnest and urgent insistence

that the wrongs done be rectified by the conciliation commissioner where they were committed. "Let us look at the record."

First

R. 34: The actions of the conciliation commissioner occurred while the petitioner's counsel, J. E. Dazey, Esq., was incapacitated from apoplexy. Affidavit of J. E. Dazey. R. 34.

Second

R. 94: The local counsel engaged by Mr. Dazey (not by the petitioner) was not authorized to represent the petitioner substantially but merely to file and receive papers, and he never intended to act in any other capacity. He did not stipulate or agree that cows are perishable. Affidavit of R. E. Coulson. R. 94 to 95.

Third

R. 27. As soon as he heard that he was about to be sold out the farmer debtor, by new counsel, presented to the judge of the district court on September 16, 1940 (R. 10, entry of September 16, 1940) his "Petition for Emergency Restraining Order". R. 27 to 35. He recapitulated the proceedings in his case stating that the orders of August 13, 1940, comprising the foreshortened stay period of 2 years, 8 months and 13 days, the excessive rent of \$6.375 and the extra payments of \$6.375 were void, that he desired to present evidence and the law, that he had not had such opportunity, that he had not admitted or stipulated that any of his property was perishable and that he had already filed a petition for rehearing of the order of August 13, 1940 with the conciliation commissioner. R. 27 to 32, paragraphs 1 to 7 and paragraph 10.

He further averred that no order for the sale of his cattle and other chattels had been entered by the conciliation commissioner, R. 32, paragraph 8, and that he had been informed that at the end of ten days from September 7, 1940, (one day after he filed his application for an Emergency Restraining Order), the conciliation commissioner proposed to issue an order of sale.

He further stated that upon the issuance of an order pursuant to the memorandum of September 7, 1940 (R. 32, paragraph 7, entry of September 7, 1940), he desired to file a petition for review thereof, or a rehearing as necessity should require.

This petition was verified by the petitioner, Henry Anton Pfister, by Robert E. Coulson, the local attorney, and by his new counsel, Elmer McClain. There was also presented to the district judge the affidavit of J. E. Dazey, Esq., in its support. R. 27 to 35.

Three of the respondents answered admitting part and denying part. R. 35 to 40.

Fourth

R. 41: This "Petition for Emergency Restraining Order," R. 27 to 34, was denied by the district court on September 19, 1940. R. 41.

Fifth

R. 139 to 147. As stated to the judge of the district court on September 16, 1940 (R. 31, paragraph 6) the petitioner had on September 16, 1940, filed with the conciliation commissioner his petition for rehearing of the order of August 13, 1940 which appears at R. 139 to 145. On September 23 he filed an amendment thereto. R. 145 to 147.

He related the foreshortened stay period of three years from April 26, 1940, entered August 13, 1940 (R. 140, paragraph 2), the rental payments of \$6,375 to be paid within the foreshortened period (R. 140, paragraph 3), the principal payments of \$6,375, making a total of \$12,750 to be paid within such foreshortened period (R. 140, paragraph 4), stating verbatim the entries appearing on the conciliation commissioner's docket (R. 140 to 142, paragraph 5). He stated the orders of appraisal and exemptions and the impossibility of meeting the payments ordered to be made therefrom (R. 142, to 144, paragraph 6). He stated that said order while bearing the approval of three secured creditors, bore no other approval and that, it was not presented to him or to his counsel and was not approved by him or by his counsel, that he had entered no objection and no hearing had been had on any objection. (R. 144 paragraphs 8 to 10).

He further stated that he had desired at all times during the pendency of his proceeding to present evidence on the subject of the order but had no opportunity to do so and that the evidence to be presented would demonstrate that the rental was contrary to law, and that said stay and possession period was unlawful. R. 144 to 145, paragraphs 11 to 14.

On September 23, 1940, his amendment further, stated J. E. Dazey, Esq., had been engaged by him as his counsel and that Attorney Dazey engaged Robert E. Coulson, Esq., to file and receive papers and to do nothing else and that up to September 7, 1940, Attorney Dazey had not known of any stipulation or agreements; and that Attorney Dazey had been incapacitated from a stroke of apoplexy; that as soon as Attorney Dazey had learned, about September 7, 1940, of the entry of the order of August 13, 1940, he had

engaged new counsel to investigate the dockets and files and protect the rights of the farmer debtor. R. 146-147 paragraphs 15.

The petition for rehearing and its amendment were verified by the petitioner. The affidavit of Attorney Dazey at R. 34 was incorporated. The affidavit of Attorney Coulson at R. 94 was also incorporated.

Three of the respondents moved the conciliation commissioner to strike the petition for rehearing for lack of jurisdiction to consider it. R. 148. The conciliation commissioner overruled it. R. 149. Certain creditors filed answers to the petition for rehearing admitting part and denying part. R. 151 to 157.

Sixth

R. 88 to 96. On September 20, 1940, the petitioner filed with the conciliation commissioner his petition for review of the order of September 20, 1940. He repeated the incapacity of his counsel, J. E. Dazey, Esq., from apoplexy and the limited authority of Robert E. Coulson, Esq., engaged by Attorney Dazey as local counsel to receive and file papers, and not by petitioner; that Attorney Dazey had engaged new counsel to investigate the proceedings as soon as he learned of them (R. 89, paragraph 2), **that on September 12, 1940, said new counsel went to the office of said conciliation commissioner, asked for the conciliation commissioner's docket and file in said cause and copied every entry pertaining thereto and examined and made notes of or copied every paper in said file, taking each paper separately therefrom, and carefully reading it, and there was on said docket no memorandum relating to the sale of petitioner's property except entries copied therefrom in paragraph 6 of this petition for rehearing and that**

there was then in said file no entry of September 7, 1940, ordering the sale of petitioner's chattels, namely cows, (R. 89, paragraph 3); that on September 19, 1940, later petitioner learned three orders had been entered for the sale of his chattels (R. 90, paragraph 4), setting out the appraisal, exemptions, and a list of chattels to be left to him by the sale of certain of his chattels and that the real estate and chattels left were not sufficient to enable him to operate his farm (R. 92, paragraph 6).

He averred that neither he nor his counsel had admitted, consented or stipulated, as stated in the said docket, that any of his chattels were perishable. He said he had desired and still desired to present the evidence and the law relating to the subject of said orders of September 7, 1940, and that he had not had opportunity to do so.

The affidavits of J. E. Dazey, Esq., and of Robert E. Coulson, Esq., were a part of this petition for rehearing R. 94, bottom of page following the prayer.

By an amendment filed August 23, 1940, (R. 95, middle paragraph) the petitioner further stated that in reference to paragraph 4 concerning the "three orders" of September 7, 1940, he did not see them "until one of them was shown by" said conciliation commissioner to the district judge on September 19, 1940, and that until then he did not see or know its contents.

Seventh

But in most of the cases where it has been held that a petition for rehearing filed "merely" to gain time for appeal will not accomplish its purpose, the facts have been that the lower court, for the accommodation of an appellant

who had let the time for appeal go by, granted a rehearing for the purpose of reviving the time for appeal and without giving any consideration to the merits involved. The history of the petitions for rehearing in this instance is quite different.

Explicit petitions for rehearing and amendments were filed showing the strong reasons why rectification should be made in the orders. R. 88 to 97. R. 139 to 148.

Motions to dismiss the petitions for rehearing on the ground that the conciliation commissioner had no jurisdiction to hear them were filed and overruled. R. 148 to 150 on the petition to rehear the order of August 13, 1940. A similar oral motion was made and orally overruled as to the petition to rehear the orders of September 7, 1940, but the record does not show it. See Note 1 at page 36 of this brief.

Answers were filed to both petitions for rehearing. Answer: R. 97 to 107. Reply: R. 107 to 108. Answer: R. 151 to 157. Re Amendment to Answer: R. 160, last part of paragraph ending "after leave of court given". R. 11, entry of September 26, 1940.

Hearings were ~~had~~. R. 11, entry of September 26, 1940. R. 13, entry November 28, 1940. The "entire proceeding" was "considered." See: R. 13, entry of November 28, 1940. "Referee's opinion and decision on Petition for Rehearing and amendment thereto of the Order of August 13, 1940", R. 158 to 164, and the "Referee's opinion and decision on Petition for Rehearing of Orders of September 7, 1940". R. 109 to 116. These all show that the petitions for rehearing were entertained and thoroughly considered by the court.

It would seem to be demonstrated by the record that the petitions for rehearing were presented for relief and not merely to gain opportunity for appeal. What the farmer debtor wanted was the benefit of Section 75 and not litigation. It is impossible to read the pleadings, affidavits, and decisions and not conclude that the petitioner sought relief, not appeal.

4.

The appellate court further says:

R. 313:

"Furthermore, the three orders of September 7 appear from the record to be consent orders, and of course no right of appeal exists in appellant with respect to them."

The assertions of the conciliation commissioner and of the creditors that the farmer debtor "consented", or "stipulated" or "agreed" that his cows, bull, horses, sows, farm machinery and crops were "perishable," and that \$6,375 rental and \$6,375 extra principal payments making a total of \$12,750 to be paid within 2 years, 8 months and 13 days, was "usual customary rental, net income and earning capacity of the property" or within "the debtor's ability to pay with a view to his financial rehabilitation", Section 75 (s) (2), are vigorously denied by the farmer debtor, by Attorney Dazey, and by Attorney Coulson. R. 32 paragraph 10. R. 34, top of page. R. 34-35. R. 93, paragraph 7. R. 94, paragraphs 8 and 9. R. 94 to 95. R. 142 to 144, paragraph 6. R. 144, paragraphs 8 to 11. R. 146, paragraph 15. R. 147, paragraph 16.

The circumstances, as well as the record, seem to cry out that the orders of August 13 and of September 7, 1940, do not qualify to enter the legal category of "consent orders".

Adverting, finally, to the observation of the appellate court at 214 in the last paragraph of the opinion that: "The District Court followed the statute and it had no power to do otherwise" we think the District Court by its own statements in *In Re Madonia* (No. 31 at page 25 of the "Supplemental Brief" herein) clearly shows it had adequate power. Sections 2(10); Section 38.

The following decisions show likewise:

Thummess v. Von Hoffman (CCA 3), No. 53, at upage 40 of "Supplemental Brief" herein;

In re Albert (CCA 2), No. 1, page 2 of "Supplemental Brief" herein;

Miller v. Hatfield, (CCA 2), No. 33, at page 26 of "Supplemental Brief" herein;

In re Amsterdam (District Court), No. 2, at page 2 of "Supplemental Brief" herein;

In re Ragozinno (District Court), No. 42, at page 34 of "Supplemental Brief" herein;

In re Fergus Falls (District Court), No. 17, at page 16 of "Supplemental Brief" herein.

Authority in Support of the Specification of Errors.

The fifteen specifications of errors which are presented at pages 37 to 41 of this brief are based upon and follow "The Questions Presented" and the "Reasons Relied Upon for Allowance of a Writ of Certiorari" at pages 10 to 24 of the Petition for Certiorari.

As briefly as possible the authority in support of each of the specification of errors will be presented.

Specification of Error 1.

The appellate court erred in holding that the District Court did not have jurisdiction to hear a petition for review which was filed within the four months period following approval of appraisal fixed by Section 75(a).

The express provision of Section 75(s) is "That in proceedings under this section either party may file objections, exceptions, and take appeals within four months from the date that the referee approves the appraisal."

The words "this section" can mean only "Section 75," not any part, but all of it.

In *Benitez v. Bank*, No. 5 at page 5 of "Supplemental Brief" herein, this court established that the meaning of the words "this section" is "hardly open to question."

There was reason for this provision. It was imagined that farmer debtor proceedings would not be subject to vigorous and sustained attack. Therefore it was provided that the farmer debtor should need no attorney and that the conciliation commissioner should assist in all procedure. Section 75(q). It was supposed that the procedure would pass quickly out of Section 75(a) to (r) and into Section 75(s) and that any appeals could be collected and taken all at once while the three year stay was running.

Specification of Error 2.

The appellate court erred in holding that the district court had no jurisdiction to hear a petition for review which was filed within 10 days after the denial of a petition for

rehearing of an order complained of, no right having intervened, and said petition for rehearing having been entertained and considered, and the entire proceeding having been considered by the conciliation commissioner.

A long and impressive array of decisions of this court from the beginning of American jurisprudence to the present has established this principle of law:

A petition for rehearing of an order, seasonably made when no right has intervened, if entertained and considered by the court, expunges the finality of that order for the purpose of appeal so that the time for appeal begins to run from the denial of the petition for rehearing.

The cases in which this rule is imbedded are here listed:

In the following cases the petition for rehearing was filed after time for appeal had expired.

Brockett v. Brockett (1844), 43 U.S., (2 How.) 238, No. 10 at page 9 of "Supplemental Brief" herein.

Washington v. Bradley (1869), 74 U.S. (7 Wall.) 575, No. 61 at page 46 of "Supplemental Brief" herein.

Slaughter House Cases (1870), 77 U.S. (10 Wall.) 273, No. 49 at page 37 of "Supplemental Brief" herein.

Memphis v. Brown, (1877), 94 U.S. (4 Otto) 715, No. 32 at page 26 of "Supplemental Brief" herein.

Morse v. United States, (1926), 270 U.S. 151, No. 35 at page 29 of "Supplemental Brief" herein.

Note: In this case the issue was whether a mo-

tion for leave to file a motion for rehearing had the usual effect upon the time for appeal. The motion for leave was filed long after the time for appeal had expired, yet the opinion makes no mention of that fact. Several decisions where a petition for rehearing was filed after time were cited. See No. 35 at page 29 of "Supplemental Brief" herein.

Gypsy v. Escor (1927), 275 U.S. 498, No. 22 at page 19 of "Supplemental Brief" herein.

United States v. Seminole, (1937), 299 U.S. 417, No. 58 at page 44 of "Supplemental Brief" herein.

Wayne v. Owens-Illinois, (1937), 300 U.S. 131, No. 62 at page 46 of "Supplemental Brief" herein.

Rowman v. Loprena (1940) 311 U.S. 262, No. 8A at page 7 of "Supplemental Brief" herein.

In the following case there is nothing to show whether the petition for rehearing was filed within time for appeal but the decisions cited in the opinion show that the court considered a petition for rehearing filed after time had the usual effect on the time for appeal.

Texas v. Murphy, (1884), 111 U.S. 448, No. 52 at page 39 of "Supplemental Brief" herein.

In the following cases there is nothing to show when the petition for rehearing was filed with reference to the time for appeal, and there is nothing to show that the point was considered to be of any importance.

Goddard v. Ordway, (*Phillips v. Ordway*) (1880), 110 U.S. (11 Otto 745, No. 21 at page 18 of "Supplemental Brief" herein.

- Northern v. Holmes*, (1894), 155 U.S. 137, No. 38
at page 31 of "Supplemental Brief" herein.
- Chicago v. Basham*, (1919), 249 U.S. 163, No. 13
at page 11 of "Supplemental Brief" herein.
- Citizens v. Opperman* (1919), 249 U.S. 448, No.
14 at page 12 of "Supplemental Brief" herein.

In the following cases the petition for rehearing was filed within time for appeal but the citations of other decisions in which the petition for rehearing was filed after time show that whether within or without time for appeal was considered immaterial or there is nothing to indicate that the court considered the distinction to be of any importance.

- Aspen v. Billings* (1893), 150 U.S. 31, No. 4 at page
3 of "Supplemental Brief" herein.
- Foorhees v. Noye*, (1804), 151 U.S. 135, No. 60
at page 45 of "Supplemental Brief" herein.
- Kingman v. Western* (1898), 170 U.S. 675, No. 30
at page 24 of "Supplemental Brief" herein.
- United States v. Elliott* (1912), 233 U.S. 524, No.
56 at page 42 of "Supplemental Brief" herein.

A few decisions of the Circuit Courts of Appeals are here cited to show that the rule is generally followed in the lower courts.

- West v. McLaughlin* (1908), CCA 6, 162 Fed. 124,
No. 64 at page 52 of "Supplemental Brief"
herein.
- Cameron v. National*, (1921), CCA 8, 272 Fed. 874,
No. 11 at page 10 of "Supplemental Brief"
herein.

Harris v. Mills, (1939), CCA 10, 106 Fed. (2d) 976, No. 25 at page 20 of "Supplemental Brief" herein.

The rule is generally recognized by the bar. Hughes, "Federal Practice," Section 5698:

"The time within which an appeal may be taken begins to run from the date of entry of the judgment or decree, unless a petition for rehearing has been made at the same term, and is entertained by the court, in which case the time limited for an appeal does not begin to run until the application is disposed of, though this is at a subsequent term . . ."

The Chairman of the Supreme Court Advisory Committee in the formulation of the new Federal Rules of Civil Procedure said on the subject of a motion for rehearing:

"When it is denied, then you have your full time after that motion is denied to take your appeal. It does not merely cut out a section of time but it destroys the finality of the judgment, and even though the time for making a motion for a new trial under the rules has ended, if you make a motion for leave to file a motion for a new trial after the time has expired, even though it isn't seasonable, and the lower court entertains your motion on the merits and then decides it—that has obliterated the finality of the judgment and you don't have to take an appeal until the three months or thirty days, as the case may be, from the time the order is made denying your motion for a new trial." Quoted from the Statement of Honorable William D. Mitchell, Chairman, Supreme Court advisory committee, in the preparation of the Rules of Civil Procedure, reported in "Federal Rules of Civil Procedure and Proceedings of the American Bar Association Institute," Cleveland, 1938, page 371.

It has often been held that a proceeding in bankruptcy is one suit from start to finish, that there are no terms in bankruptcy, and that a bankruptcy court may at any time reconsider any former action so that the time of the entry of the original order would have no effect on the time for appeal.

Sandusky v. National Bank, (1875), 90 U.S. (23 Wall.) 289, No. 47 at page 36 of "Supplemental Brief" herein.

Wayne v. Owens-Illinois (1937), 300 U.S. 131, No. 62 at page 46 of "Supplemental Brief" herein.

Borchard v. California, (1940), 310 U.S. 311, No. 8 at page 6 of this brief. Note: The principle was applied. This subject is not mentioned but several orders in the case entered in preceding years were held not binding on the parties and considered of no effect.

Circuit Courts of Appeals decisions:

In re Burr, (1914), CCA 2, 217 Fed. 106, No. 10A at page 10 of "Supplemental Brief" herein.

In the Matter of Pottasch, Central v. Irvin, (1935), CCA 2, 79 Fed (2d) 613, No. 40 at page 32 of "Supplemental Brief" herein.

In re Jayrose, (1937), CCA 2, 93 Fed. (2d) 471, No. 28 at page 22 of "Supplemental Brief" herein.

In re Albert, (1941), CCA 2, 122 Fed. (2d) 393, No. 1 at page 2 of "Supplemental Brief" herein.

In re Mercur, (1903), CCA 3, 122 Fed. 384, No. 32A at page 26 of "Supplemental Brief" herein.

In re Jemison, (1902), CCA 5, 112 Fed. (2d) 966, No. 28A at page 23 of "Supplemental Brief" herein.

In re Ives, (1902), CCA 6, 113 Fed. 911, No. 27 at page 22 of "Supplemental Brief" herein.

In re Hamilton, (1913), CCA 7, 209 Fed. 596, No. 23 at page 20, of "Supplemental Brief" herein.

This is the circuit to which certiorari is prayed in this cause.

First v. Belle Fourche, (1907), CCA 8, 152 Fed. 64, No. 18 at page 16 of "Supplemental Brief" herein.

Specification of Error 3.

The appellate court erred in holding that the district court had no jurisdiction to hear a petition for review of a void order of a conciliation commissioner unless such period for review was filed within ten days of the entry of such void order.

The order of August 13, 1940, for extra principal payments was made without notice to the farmer debtor or to any creditor (except of course the creditors presenting the motions on that day). It is void. R. 9, entry of August 13, 1940.

A few specific authorities upon this precise subject of hearing before a referee in bankruptcy proceedings will suffice.

Remington on Bankruptcy, in Section 27 relating to Celerity of Proceedings, says:

"While proceedings in bankruptcy may be summary, they should not be so summary as to deprive a party of those fundamental rights that belong to every citizen, among which are the rights to be advised by the demand made upon him, and after being so advised, to have a reasonable time to prepare his defense and produce his witnesses."

Likewise in his Chapter XXXVI on Summary Jurisdiction over the Bankrupt, Remington says in Section 2406:

"Reasonable notice must be served on the bankrupt or other party upon whom the order is requested so that he may have reasonable time to prepare for his defense."

In Section 2408:

"Due hearing must be had, and reasonable opportunity therefor is requisite."

In support of the foregoing statements Remington quotes at length from three opinions: (1), *In re Rosser*, No. 44 at page 35 of "Supplemental Brief" herein; (2) *Boyd v. Glucklich*, No. 9 at page 8 of "Supplemental Brief" herein, and (3) *In re Frank*, No. 19 at page 17 of "Supplemental Brief" herein. These decisions relied upon the decision of this Court in *Galpin v. Page*, 85 U.S. (18 Wall.) 350, 368, No. 20 at page 18 of "Supplemental Brief" herein. Other decisions are in the same tenor: *Morgan v. U.S.*, 304 U.S. 1, No. 34 at page 28 of "Supplemental Brief" herein; *Holden v. Hardy*, 169 U.S. 366, 389, No. 26 at page 21 of "Supplemental Brief," and *Coe v. Armour*, 237 U.S. 413, 426, No. 15 at page 13 of "Supplemental Brief" herein.

Specification of Error 4

The appellate court erred in holding that the district court had no jurisdiction, while a farmer debtor proceeding was still pending, to hear a petition for review of an order entered by a conciliation commissioner, regardless of when such petition for review was filed.

It is to be remembered that the district court dismissed the petitions for review on the ground that it had no jurisdiction.

Please refer for authority for this specification to the preceding list of decisions "Specification of Error 3" holding that bankruptcy is one suit and there are no terms in bankruptcy, so that a bankruptcy court may reconsider an order at any time.

Specification of Error 5

The appellate court erred in holding that Section 39(c) of the Bankruptcy Act in naming ten days for the filing of a petition for review is a statutory limitation and not a rule of procedure.

Section 39(c) is subject to Section 2(10) and Section 38 of the Bankruptcy Act. That Section 39 (c) is the enactment of a rule of procedure which remains such is attested:

By Section 2(10) of the Act which provides that courts of bankruptcy are invested with original jurisdiction to consider and reverse or remand with instructions, the records, findings and orders of referees.

By Section 38 which makes the referees' jurisdiction and proceedings always subject to review by the judge.

The courts have overwhelmingly so held:

Second Circuit:

In re Albert, *Brooklyn v. Albert*, CCA 2, No. 1

Third Circuit:

at page 2 of the "Supplemental Brief" herein
Thummes v. Von Hoffman, CCA 3, No. 53 at page
 40 of the "Supplemental Brief" herein.

Sixth Circuit:

Miller v. Hatfield, CCA 6, No. 33 at page 26 of the "Supplemental Brief" herein.

The district court below has itself so held shortly before the final orders in this case were entered, *In re Madonia*, District Court Illinois, No. 31 at page 25 of the "Supplemental Brief" herein.

Other district court decisions have held the same:

In re Amsterdam, District Court New York, No. 2, at page 2 of the "Supplemental Brief" herein.

In re Ragozinno, District Court New York, No. 42 at page 34 of the "Supplementary Brief"

In re Fergus Falls, District Court Minnesota, No. 17 at page 16 of the "Supplementary Brief" herein.

Specification of Error 6

The appellate court erred in holding that Section 2(10) of the Bankruptcy Act is limited by Section 39(c) of that act.

Please see the authority listed under the preceding "Specification of Error 5."

Specification of Error 7

The appellate court erred in holding that Section 38 of the Bankruptcy Act is limited by Section 39(c) of that Act.

Please see the authority listed under the Preceding "Specification of Error 5."

Specification of Error 8

The appellate court erred in holding, in a farmer debtor proceeding pending before a conciliation commissioner where a petition for rehearing of an order is filed, no right having intervened, and said petition for rehearing is entertained by the conciliation commissioner who overrules a motion to dismiss it for lack of jurisdiction to entertain it, and considers the whole proceeding and then denies the petition, that the time for seeking a review of said order does not run from the date of the denial of such petition for rehearing.

This court has repeatedly stated in its twelve unanimous opinions upholding Section 75 that it was enacted for a purpose which may not be defeated by narrow constructions. They are:

Wright v. Finton (1937), 306 U.S. 400;

First v. Beach, (1937), 301 U.S. 435;

Adair v. Bank, (1938), 303 U.S. 350;

Wright v. Union, (1938), 304 U.S. 502;

John Hancock v. Bartels, (1939), 308 U.S. 180;

Gray v. Union, (1939), 308 U.S. 523;

Morrison v. Federal, (1939), 308 U.S. 524;

Kalb v. Feuerstein, (1940) 308 U.S. 433;

Borchard v. California, (1940), 310 U.S. 311;

Wright v. Union, (1940), 311 U.S. 273;

Benitez v. Bank, (1941) 313 U.S. 270;

Wright v. Logan, (February 2, 1942), — U.S. —

Section 75 differs in many important respects from the other four provisions for the relief of debtors.

(1) Section 75(q) provides that:

"A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto

arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section."

(2) "Any farmer failing to obtain the acceptance" to a composition or extension proposal "or if he feels himself aggrieved by the composition and/or extension, may amend his petition"

(3) Contrary to all other debtor provisions under Chapter VIII of the Bankruptcy Act there is no authority in Section 75 for dismissing a farmer debtor case.

(4) Contrary to all other such statutes there is no provision for finding that a farmer debtor petition is filed in good faith or dismissing it.

(5) The right of the farmer debtor to redeem may not be cut off by a request for a public sale. *Wright v. Union Central*, 311 U.S. 273.

(6) The statute quite clearly was enacted to accomplish a purpose. The ultimate goal is the opportunity of the farmer debtor to redeem after a three year stay under Section 75(s). That purpose can not be thwarted. By indirectly accomplishing a forbidden dismissal through the device of (1) a foreshortened stay and rental period, (2) unreasonable rent, (3) impossible principal payments, and (4) sale of all a farmer debtor's chattels so that he has not capital for earning the wherewithal for his rehabilitation, and then finally invoking the authority in Section 75(s) (3), to punish him for violation of the conciliation commissioner's orders and the provisions of the act, the conciliation commissioner would be doing indirectly what the statute and the decisions of this court prohibit being done directly.

Please also refer to the rule discussed under "Specification of Error 2". That rule was laid down in cases where the special purposes of Section 75 were not involved.

Specification of Error 9

The appellate court erred in hold that in a farmer debtor proceeding the period named in Section 39(c) of the Bankruptcy Act limits the time within which a petition for rehearing of an order may be filed with a conciliation commissioner, no right having intervened.

Specification of Error 10

The appellate court erred in holding that a conciliation commissioner in a farmer debtor proceeding may not entertain or consider a petition for rehearing of his order except when such petition is filed within ten days of the entry of the order, even though no right has intervened.

The purpose of Section 75 makes stronger the reasoning discussed under the previous heading "Specification of Error 1" and that under heading "Specification of Error 2" and that under heading "Specification of Error 5"

Specification of Error 11

The appellate court erred in sustaining the District Court in declining to hear, and dismissing, on the ground of lack of jurisdiction, a petition for review of the order of the conciliation commissioner which fixed the statutory stay and rental period in the farmer debtor proceeding to run from a date prior to the approval of the appraisal and prior to the order setting aside exemptions.

Specification of Error 12

The appellate court erred in sustaining the district court in declining to hear, and dismissing, on the

ground of lack of jurisdiction, a petition for review of the statutory order of the conciliation commissioner which stayed proceedings and permitted possession to be retained by the farmer debtor upon payment of rental, and made the time of such stay and possession less than three years.

Specification of Error 13

The appellate court erred in sustaining the district court in declining to hear, and dismissing, upon the ground of lack of jurisdiction, a petition for review of an order of the conciliation commissioner which ordered sold as perishable property the farmer debtor's cows, bull, horses, sows, farm machinery and farm crops consisting of corn, soy beans, hay fodder, ensilage, oats, barley, rye and wheat.

Specification of Error 14

The appellate court erred in sustaining the district court in declining to hear, and dismissing, upon the ground of lack of jurisdiction, a petition for review of an order by a conciliation commissioner ordering the farmer debtor to pay as rental and as payments on the principal of his debts, within 2 years, 8 months and 13 days, the total sum of \$12,750 where the appraisal of all the real estate is \$16,000 and the appraisal of all the unexempt chattels is \$1,786.

The orders referred to in specifications 11, 12, 13 and 14, were void because the conciliation commissioner had no authority to issue them:

The orders in (11) and (12) fixing the statutory stay and rental period and restricting possession and payment of rental to run from a date preceding the approval of the appraisal and the setting aside of exemptions were as void

as if a conciliation commissioner should fix the stay period to begin at a date more than three years preceding the entry of the stay order and then proceed to order a sale because the stay had terminated without redemption. Though there is a difference in amount of time there is no difference in principle between the orders actually issued and the supposed one.

The orders referred to in (13) which characterize the farmer debtor's livestock, farm machinery and farm crops as "perishable" and use that device to accomplish their immediate sale, ostensibly, without interfering with the statutory stay, possession and rental period, yet would effectually terminate it.

The orders referred to in (14) which fixed rental and principal payments in the total of \$12,750 to be paid in 2 years, 8 months and 13 days, to be earned from an 80 acre dairy farm appraised at \$16,000 for real estate and \$1,786 for chattels, the chattels having been ordered sold.

Such impossible orders are a nullity. If they may be accorded sanctity because issued by a conciliation commissioner in the administration of the farmer debtor law which enjoins upon him the execution of a trust if the farmer debtor confides in him [Section 75 (q)], then there is no farmer debtor law because it creates its own self destruction.

This court said in *Mitchell v. St. Marc* (1866), 71 U.S. (4 Wall) 237: "Void process confers no right on an officer to sell property and all acts done under it are absolute nullities". In *Gaines v. Orleans* (1868), 73 U.S. (6 Wall.) 642, this court said: "Where sales were irregular, but those who bought the property did it in good faith and without notice, they are not protected except by the bar of time prescribed by the law."

So in *Williamson v. Berry* (1850), 49 U.S. (8 How.) 495 541, this court said: "But if it [a court] act without authority, its judgments and orders are nullities;" To the same effect: *Gantley v. Ewing*, (1845), 44 U.S. (3 How.) 717, 713, 714, 715; *Voorhees v. Jackson* (1836) 35 U.S. (10 Pet.) 449, No. 59 at page 45 of the "Supplemental Brief" herein; *Thompson v. Tolmie*, (1829), 27 U.S. (2 Pet.) 157, 163.

Specification of Error 15

The appellate court erred in sustaining the district court in declining to hear, and dismissing, upon the ground of lack of jurisdiction, a petition for review of an order of the conciliation commissioner, when proceedings for obtaining such review had been perfected by the filing of a petition for review by a person aggrieved by such order and the serving of a copy of said petition upon the proper adverse parties, and when the conciliation commissioner had duly prepared and transmitted to the clerk his certificate on said petition for review, all in compliance with Section 39(c) of the Bankruptcy Act, such dismissal being based upon the sole reason that said petition for review was not filed within ten days after the original entry of the order complained of.

Again, it is to be noted that the district court dismissed the petitions for review for **lack of jurisdiction** and the appellate court sustained those dismissals.

Section 2(10) specifically invests the district court "with such jurisdiction . . . as will enable them to exercise original jurisdiction . . . to . . . consider records, findings and orders certified to the judges by referees"

Now the conciliation commissioner duly certified his records, findings and orders to the judge and the judge had statutory jurisdiction to consider them.

CONCLUSION.

To the petitioner it appears to be evident that the decision below calls for the interpretation of the several statutes of the United States involved therein; that the decision of the court below is in conflict with the decisions of several other Circuit Courts of Appeals; the court below has decided important questions of federal law which have not been, but ought to be, settled by this court; it has decided the various federal questions referred to in a way conflicting with applicable decisions of this court; and has so far departed from the accepted and usual course of judicial proceedings, and has sanctioned such a departure by the district court, as to call for this court's exercise of its power of supervision.

Respectfully submitted,

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